

HEGEL AND THE REPRESENTATIVE CONSTITUTION

Hegel and the Representative Constitution provides the first comprehensive historical discussion of the institutional dimension of G. W. F. Hegel's political thought. Elias Buchetmann traces this much-neglected aspect in unprecedented contextual detail and makes the case for reading the *Philosophy of Right* from 1820 as a contribution to the lively and widespread public debate on the constitutional question in contemporary Central Europe. Drawing on a broad range of primary source material, this volume illuminates the wider political discourse in post-Napoleonic Germany, carefully locates Hegel's institutional commitments within their immediate cultural and political context, and reveals him as something closer to a public intellectual. By exploring this indispensable thinker's demand for the constitutional protection of popular participation in government, it contributes beyond Hegel scholarship to shed new light on the history of democratic theory in early nineteenth-century Europe and encourages critical reflection on questions of representation today.

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For Franziska

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Conventions and Abbreviations

All translations are my own except where specifically noted. Emphasis in the original, usually expressed through spaced letters, is rendered as *italics* in my quotations.

Anonymous works are generally given by title. Where identification of the author has been successful, their names are given in square brackets. Where authorship remains well-founded conjecture, a question mark has been added.

When reproducing the views of historical authors, I largely follow their use of language, which, like their viewpoints, is seldom gender-neutral.

The following abbreviations are used:

- B* *Briefe von und an Hegel*, 4 vols., edited by Johannes Hoffmeister (Hamburg, 1977).
- BZ* *Hegel in Berichten seiner Zeitgenossen*, edited by Günther Nicolini (Hamburg, 1970).
- E* *Encyclopädie der philosophischen Wissenschaften im Grundrisse* (1817), edited by Wolfgang Bonsiepen and Klaus Grotzsch (Hamburg, 2000). [GW13]
- GW* *Hegels Gesammelte Werke. Kritische Ausgabe*, Deutsche Forschungsgemeinschaft in Verbindung mit der Rheinisch-Westfälischen Akademie der Wissenschaften (Hamburg, 1968–).
- K* *Verzeichniß der von Herrn Dr. Hegel und dem Dr. Herrn Seebeck hinterlassenen Bücher-Sammlungen* (Berlin, 1832).
- LW* '[Beurtheilung der] Verhandlungen in der Versammlung der Landstände des Königreichs Württemberg, im Jahr 1815 und 1816. XXXIII Abtheilungen', in *Schriften und Entwürfe I* (1817–1825), edited by Friedrich Hogemann and Christoph Jamme (Hamburg, 1990). [GW15]

- PR *Grundlinien der Philosophie des Rechts. Naturrecht und Staatswissenschaft im Grundrisse*, edited by Klaus Grotzsch and Elisabeth Weisser-Lohmann (Hamburg, 2009). [GW14,1]

Following established convention, paragraphs rather than page numbers are given in bracketed citations (§), accommodating readers referring to any edition in any language. Following Hegel's own habit of referring to remarks on specific paragraphs separately as *Anmerkungen*, I have marked them with an A. For the preface, pages refer to this edition. Standard English editions, which I have consulted while translating, sometimes adopting and often adapting their turns of phrase, are G. W. F. Hegel, *Elements of the Philosophy of Right*, edited by Allen W. Wood, translated by H. B. Nisbet (Cambridge, 1991) and G. W. F. Hegel, *Outlines of the Philosophy of Right*, translated by T. M. Knox, revised, edited and introduced by Stephen Houlgate (Oxford, 2008).¹ Major differences are discussed in the text or footnotes. Both translations have proven immensely beneficial to generations of Hegel scholars, this one included, yet they have clearly favoured intelligibility over literalness. They also reproduce the book in the form Eduard Gans gave it for his edition in 1833 rather than the way in which Hegel actually published it in 1820. Thus, they contain additions from VPR22 and VPR24, which I have marked as Z in reference to Gans's term *Zusatz*.

- VPG *Vorlesungen über die Philosophie der Geschichte*, edited by Eva Moldenhauer and Karl Markus Michel (Frankfurt am Main, 1986).
- VPR17 'Naturrecht und Staatswissenschaft', Nachschrift Peter Wannenmann, Wintersemester 1817/18, in *Vorlesungen über die Philosophie des Rechts*, edited by Dirk Felgenhauer (Hamburg, 2013). [GW26,1]
- VPR18 'Natur- und StaatsRecht', Nachschrift Carl Gustav Homeyer, Wintersemester 1818/19, in *Vorlesungen über die Philosophie des Rechts*, edited by Dirk Felgenhauer (Hamburg, 2013). [GW26,1]
- VPR19 'Philosophie des Rechts', Nachschrift Johann Rudolf Ringier und Anonymus (Bloomington), Wintersemester 1819/20, in *Vorlesungen über die Philosophie des Rechts*, edited by Dirk Felgenhauer (Hamburg, 2013). [GW26,1]

¹ This is but the latest edition since Knox's first translation in 1942.

- VPR₂₁ 'Die Philosophie des Rechts', Nachschrift Anonymus (Kiel) Fragment, Wintersemester 1821/22, in *Vorlesungen über die Philosophie des Rechts*, edited by Klaus Grotzsch (Hamburg, 2015). [GW26,2]
- VPR₂₂ 'Philosophie des Rechts', Nachschrift Heinrich Gustav Hotho, Wintersemester 1822/23, in *Vorlesungen über die Philosophie des Rechts*, edited by Klaus Grotzsch (Hamburg, 2015). [GW26,2]
- VPR₂₄ 'Philosophie des Rechts', Nachschrift Karl Gustav Julius von Griesheim, Wintersemester 1824/25, in *Vorlesungen über die Philosophie des Rechts*, edited by Klaus Grotzsch (Hamburg, 2015). [GW26,3]
- VPR₃₁ 'Rechtsphilosophie', Nachschrift David Friedrich Strauss, Wintersemester 1831/32, in *Vorlesungen über die Philosophie des Rechts*, edited by Klaus Grotzsch (Hamburg, 2015). [GW26,3]

Introduction

Humanising Hegel

As concerns the individual, each is in any case a *child of its time*; so too is philosophy *its time comprehended in thought*.

G. W. F. Hegel, *Philosophy of Right*

Just over two hundred years ago, in the autumn of 1820, Georg Wilhelm Friedrich Hegel published what subsequently became one of the most contentious books in the history of political thought. This recent anniversary of the *Philosophy of Right*, together with Hegel's 250th birthday, is an especially opportune moment to reflect anew on the book and its author. With his name invoked ubiquitously and incessantly, Hegel is more often treated as our own contemporary, or indeed as a kind of philosophical spirit hovering above the tides of time, than an actual human being who lived around the turn of the nineteenth century. My suggestion, in brief, is that we might do well to humanise this towering figure in the history of philosophy in greater measure than tends to happen and to remember that both form and content of the notorious *Philosophy of Right* were subject to an indispensable measure of contingency. This study aims to demonstrate how a situated analysis of Hegel's political thought, drawing on a wide variety of contemporary sources, enables a better understanding of his arguments and what he was trying to do in relation to the issues of his age.

Hegel, who was born in 1770 and died in 1831, lived in tumultuous times, overshadowed by the French Revolution and all its multifarious repercussions, and to think of his life as uneventful is positively misleading. Whenever he is treated as an obscure intellectual, Hegel's own experience of war, the crumbling of empire and the establishment of new states, which all deeply impacted his thinking, is too easily forgotten. Time and again, his writings and speeches reflect an acute awareness of the radical nature of ongoing changes. As he remarked in early 1807, just after Napoleon's troops had occupied his Jena home, 'it is not difficult to see

that our time is a time of birth and transition to a new era'.¹ Apart from all other ambitions, Hegel especially wanted to comprehend and render comprehensible his own time, and the central premise underlying my work is that we can hardly begin to make sense of Hegel's thinking without some knowledge of its historical context.

In particular, this book makes the case for reading G. W. F. Hegel's *Philosophy of Right* from 1820 as a pertinent contribution to the public debate on the constitutional question in post-Napoleonic Germany. It shows how Hegel's work addressed contemporary political concerns, engaging with both a German and broader European debate about how best to ensure government addressed the common good of society in the changed social and political climate brought about by the French Revolution and the development of commercial society. In the process, I hope to humanise a thinker with a notorious reputation for obscurity and to unearth the ideas of a number of lesser-known contemporaries, thereby drawing attention to previously overlooked connections and parallels as well as alternatives. Hegel constitutes the biographical centre of gravity, a kind of prism through which I approach early nineteenth-century discussions about government and representation. In providing a new interpretation of Hegel's vision of politics in the light of his intervention in contemporary debate, my work thus contributes to a history of thinking about the state and its organisation in early nineteenth-century Germany and beyond.

This book's title is inspired by a term used by contemporaries and Hegel himself, *repräsentative Verfassung* or *Repräsentativverfassung*.² While attempts at precise definition were undertaken, these constituted no more than bids for the prerogative of interpretation, and the exploration of that struggle lies at the heart of this work. At the most basic level, 'representative constitution' expresses the demand for some form of popular participation in government. In this sense, it corresponds to 'representative government' or 'representative system', a term that is more common and intuitive nowadays, in English as in German (*Repräsentativsystem*). Yet these expressions leave the concomitant claim unstated – the very need for a constitution, which warranted explicit emphasis at a time that saw the first wave of constitutionalisation in Central Europe. Both components of

¹ *GW9*, 14; preface to the *Phenomenology of Spirit*. Cf. 'Rede vom 30. August 1815' in *GW10*, 1.

² Hegel embraces the term without hesitation in his 1817 article on the Württemberg Estates (*LW*, 30, 33). In the later (and textually less secure) *Lectures on the Philosophy of History*, his mention of it is more ambivalent (*VP*, 67).

the title-giving term are thus equally important in capturing the single greatest political demand of the age. In the general sense given here, Hegel undoubtedly embraced this demand and, in distinctive fashion, accommodated it in the *Philosophy of Right*. It is the exploration of Hegel's characteristic contribution to the discourse on the representative constitution that occupies the following pages.

As such, this book presents the first comprehensive historical discussion of the institutional dimension of Hegel's political thought. Sceptical of the arrangements favoured by Hegel (which include monarchy, an unusual separation of powers and an idiosyncratic system of representation, to name a few), most commentators have preferred to skip these specifics and to focus instead on what has been described as 'the *broadly Hegelian state*'.³ Even if we ultimately reject Hegel's institutional choices, however, we will benefit from understanding them more closely in the historical context of his own time. By recovering the actual constitutional debates in which Hegel participated, the specificity of his commitments will be clarified and his concrete institutional choices become more transparent. Such increased scrutiny and consideration of the original context of Hegel's book will provide the necessary groundwork for the renewed appreciation of the force of his ideas as well as their continued relevance, or otherwise. It is thus of genuine philosophical as well as historical interest, encouraging critical reflection on ideas and ideals of government and representation today.

Metaphysics, Polemics and Debate

There is broad consensus that Hegel's thought is still highly relevant. While it was long common to admit that his logic, the cornerstone of his speculative philosophy, was obsolete, its importance has recently been vindicated.⁴ But even those who consider the logic an irrelevant appendage

³ Patten 1999, 166. Cf. Hardimon 1994, 254.

⁴ Most recently and authoritatively by Pippin 2019. For some earlier reconstructions and critical discussion of Hegel's logic in English, see Taylor 1975; Burbidge 1981; Rosen 1982; Inwood 1983. Hegel's *Science of Logic* was published in three parts (1812, 1813, 1816) and partly revised during his lifetime (1832); see *GW2I*, *GW1I*, *GW12*. The terms logic and metaphysics are often used complementarily in discussions of Hegel's philosophy because 'his objective logic takes the place of what previously had been called metaphysics' (Burbidge 2006, 35). E.g., in §24 of the 1830 *Encyclopedia*, Hegel claims that '*logic* coincides with *metaphysics*' (*GW20*, 67). Pippin's entire 2019 book, subtitled *Logic as Metaphysics*, is dedicated to the 'interrogation' of this claim (37). For references to the 'interesting historical story to Hegel's coming to this position' (which he held from 1806), see Pippin 2019, 3–4, n. 2. For more, see Houlgate 2006 and the references in n. 12 below.

find that his diagnosis of the ills of modern society retains much currency. Living in an age at once different from and similar to our own, Hegel is perceived as having supplied not the solutions but many of the basic questions about life in modern society. Atomism and alienation may be mentioned as representative keywords here, and the view that Hegel's 'penetrating analysis of the human predicament in modern society is perhaps unsurpassed among social observers of the past two centuries' is not unusual.⁵ Even when putting Marx aside as Hegel's most influential successor, his thought has without a doubt proven a crucial influence on more than 'just' various philosophical movements.⁶ Hegel's practical philosophy continues to inspire today, and explicit attempts are being made at 'a re-actualisation of the Hegelian philosophy of right'.⁷ Understanding Hegel's thought is thus still a pursuit of much relevance. This makes it simultaneously more difficult to resist retrospective evaluation and more important to adopt a historically informed approach. While theoretical engagement with Hegel's philosophy has flourished, however, intellectual history is neglected in the plethora of literature.

Interest in Hegel is alive and kicking, as testified by a proliferation of monographs, handbooks and new translations of Hegel's major works in the last few years.⁸ In the literature, it is commonly remarked that a veritable 'Hegel renaissance' has materialised over the last few decades, attracting attention to his works from far beyond the so-called Continental tradition of philosophy.⁹ Notwithstanding a turbulent history of reception, no one could reasonably deny the *Philosophy of Right* its place in the canon of Western philosophy, and disputes about the importance

⁵ Wood 1991, xxvii. Cf., for instance, Taylor 1979 or the more recent claim that 'the present epoch, can be best and fully grasped through the Hegelian system' in Hamza and Ruda 2017, 9. See further Welsch and Vieweg 2003.

⁶ On Hegel's influence in the nineteenth century, see most recently Stewart 2021: *Hegel's Century*. On *The Impact of Idealism* more broadly, see the extensive four-volume work edited by Boyle and Disley 2013.

⁷ Honneth 2001, subtitle. Honneth 2011, 2014 pursues this enterprise further; for another attempt, see Menke 2018. The broadest and most influential engagement with Hegel's practical philosophy in recent years remains Pippin 2008. On Hegel's legacy, see, for instance, Halbig, Quante and Siep 2004 and Herzog 2013b.

⁸ The latest companions are Beiser 1993a, 2008a; Houlgate and Baur 2011; Laurentiis and Edwards 2013; Moyer 2017; Bykova and Westphal 2020. New translations of the *Phenomenology of Spirit* have recently appeared, by M. Inwood for Oxford and T. Pinkard for Cambridge; Hegel 2018a, 2018b. Recent works on Hegel's political philosophy include; Brudner 2017; James 2017; Comay and Zantvoort 2018 and works listed in n. 7. An annual bibliography is compiled by the editors of *Hegel-Studien* at www.pe.ruhr-uni-bochum.de/philosophie/i/forschung_kdp/hegel_studien.html.de.

⁹ For example, by Beiser 1993b, 2 and Beiser 2008b, title, dating its start to the 1960s.

or otherwise of its metaphysical grounding are abiding. In Anglophone scholarship, the third successive 'wave' of reception has been identified.¹⁰ Following the appearance of influential works in the non-metaphysical vein, renewed emphasis has recently been placed on the systematic dimension of Hegel's thought again and there has been a revival of metaphysical readings of the *Philosophy of Right*.¹¹ The historically minded analysis of Hegel's thinking provided in this book is intended to engage scholars on both sides of the divide.

Hegel is frequently regarded as the systematic philosopher par excellence and, irrespective of divergent strategies of dealing with it, most interpreters agree that he considered himself a metaphysician.¹² His systematic aspirations are evident throughout his works and aptly symbolised by his image of 'the circle of philosophy'.¹³ As far as the *Philosophy of Right* is concerned, Hegel relates it explicitly to his previous work in the book's preface. There, he introduces it as an expansion of the subjects covered briefly under the heading of 'objective spirit' in his 1817 *Encyclopedia of the Philosophical Sciences*, offering 'a broader, in particular more systematic exposition of the same basic concepts'.¹⁴ In the same way, the *Lectures on the Philosophy of History* would present an extension of the final section (on world history) in the *Philosophy of Right*. What sets the book apart from 'an ordinary compendium', Hegel explains, is 'the method which constitutes its guiding principle', namely the 'speculative mode of cognition' as developed in the *Science of Logic* from 1812 and 1816.¹⁵ As Raymond Plant has pointed out,

¹⁰ For a recent survey of different phases in the reception of Hegel, see Goodfield 2017. A more detailed account of developments up to the 1970s is provided by Ottmann 1977. For a comparison of developments in Germanophone vis-à-vis Anglophone scholarship, see Pippin 2004.

¹¹ Prominent interpretations in the non-metaphysical vein include Findlay 1958; Avineri 1972; Pelczynski 1972, 1984; Wood 1990; Tunick 1992; Hardimon 1994; Patten 1999; and Neuhouser 2000. Robert Pippin's influential work is often added to this group, or seen as offering a third way. Early and more recent champions of metaphysical readings include Plant 1973; Taylor 1975; Steinberger 1988; Beiser 2005; Brooks 2007a; Kervégan [2008] 2018, Stern 2009; Goodfield 2014; Brooks and Stein 2017; and Thompson 2018. See also the *Hegel Bulletin*'s virtual special issue on 'Hegel and Politics' at www.cambridge.org/core/journals/hegel-bulletin.

¹² See Leopold 2007, 45–47 and Beiser 1993b for succinct discussions of Hegel's own assertions about the importance of metaphysics and his defence of it; Houlgate 1986; Longuenesse 2007; and Schülein 2016 on Hegel's broader critique of metaphysics (Hegel both accepted and went beyond Kant's critique of metaphysics); Stern 2009; Bowman 2013; and Kreines 2015 on *Hegel's Metaphysics and Its Philosophical Appeal* (Kreines). Pippin 2019 argues that 'Hegel is no metaphysician in th[e] rationalist sense, but he is most certainly a metaphysician in the Aristotelian sense' (35; cf. 94).

¹³ *E*, 34. ¹⁴ *PR*, preface, 5.

¹⁵ *PR*, preface, 5; 'speculative Erkenntnißweise'. Although the second part of *Wissenschaft der Logik* was dated to 1813, it still appeared in December 1812, seven to eight months after the first (Jaeschke 2010, 221).

if the Idea is to be traced ‘in all modes of experience’, then indeed ‘philosophy has to be a systematic activity’.¹⁶ Hegel’s injunction that readers should understand and judge the *Philosophy of Right* according to ‘the logical spirit’ clearly expresses his metaphysical ambition.¹⁷ A historical approach seems to demand that we take his claim seriously. Not least, Hegel’s larger philosophical commitments may sometimes have acted as a constraint on the positions he was willing to accept from contemporary debate. Yet the presentation of the *Philosophy of Right* as one part of a larger philosophical system also constitutes part of Hegel’s ‘game’, if you will, and there is now evidence that he did not consider his lectures on the philosophy of right the place to delve into ‘the metaphysical proper’.¹⁸

Convinced that we need to explore not just the ontological and epistemic dimensions of Hegel’s philosophy, but especially his strategy of argumentation, I want to focus on the polemics involved in his writing. In other words, I suggest that we not take Hegel’s text as a given but see him as engaged in a common discourse and scrutinise the rationales that led him to exclude some arguments to the benefit of others.¹⁹ In doing so, I both acknowledge the importance of metaphysical justifications for the historical Hegel and try not to accept them at face value without exploring other possible (that is to say, contextual) motivations for his choices. If a justification was needed for shifting the emphasis from the question about the importance of Hegel’s metaphysics to his interaction with other writers of his time (which I would call the discursive dimension of his writings), the fact that Hegel was a participant in the debates reconstructed here, but that his contribution was not their focal point, surely provides it.

That many aspects featured in Hegel’s theory of the state were to some extent determined by contemporary discourse should not come as a surprise. The polemical dimension of his writing is readily discernible to anyone upon reading merely the notorious preface to the *Philosophy of Right*. On the very first page, Hegel declares that the remarks on the book’s paragraphs are intended ‘to clarify occasionally the more abstract content of the text and to take fuller account of related ideas commonplace at the present time’.²⁰ An anonymous, and by no means uncritical,

¹⁶ Plant 1973, 139, 138. ¹⁷ *PR*, preface, 6.

¹⁸ *VPR24*, 1071. In the context of the relation between thinking and the will, the following is recorded here: ‘Das eigentlich Metaphysische ist eine Seite, die uns hier nichts angeht.’

¹⁹ As Knowles 1992, 405 has observed, ‘the major difficulty of studying Hegel lies ... in unearthing what he conceals – and what he conceals, too often, is the process of argumentation’.

²⁰ *PR*, preface, 5.

contemporary reviewer judged several of Hegel's remarks to be 'extremely noteworthy, especially in relation to the present'.²¹ It seems highly unlikely that someone with such an acute sense for the importance of history and socio-cultural context as Hegel really should have thought of himself as fabricating a purely abstract and, indeed, timeless theory.²² Even if he wanted to project the image of a producer of purely objective science, this constitutes a situational act in itself.²³ At the same time, the famous line about being a child of one's time in the preface to the *Philosophy of Right* conveys deep-rooted scepticism about the very notion of theory detached from actual human experience.²⁴ This is corroborated by an earlier comment on the reception of Machiavelli, where Hegel notes that it is 'quite senseless' to abstract the message of *Il Principe* from its contemporary Italian context and to read it as 'a compendium of moral and political principles applicable indiscriminately to all situations – i.e. to none at all'.²⁵ Yet that seems to be exactly the fate which has befallen Hegel's own book.

Books on Hegel are legion, yet conscientious attention to historical context is regularly missing, as, indeed, is detailed engagement with Hegel's concrete politics. Much scholarship has tended to provide interpretations of Hegel 'in the context of his own work' or, at best, in relation to other representatives of German idealism, mostly Kant.²⁶ While Kant and Fichte undoubtedly do provide important reference points for Hegel's constitutional ideas, and feature in this study as well, such analysis does

²¹ [Wendt?] 1821, 75.

²² Friedrich Engels claimed that 'what distinguished Hegel's mode of thinking from that of all other philosophers was the exceptional historical sense underlying it' (Engels [1859] 1980, 474). Forbes 1975 still provides a powerful account of Hegel's historical consciousness.

²³ In this context, see especially Hegel's introduction to the *Lectures on the History of Philosophy*; Hegel 1986, 1–137. On Hegel's historicism and approach to the history of philosophy, see Beiser 1993c, 1995. Hegelian opposition to contextualism has recently been explored by Hunter 2019.

²⁴ *PR*, preface, 15. I have taken the liberty to slightly adapt the quotation in the epigraph above, rendering Hegel's 'son' as 'child', as have Knox in Hegel 2008, 15 and Nisbet in Hegel 1991, 21.

²⁵ Cited from Hegel 1999, 80–81 ('The German Constitution'). Hegel makes a very similar point about Plato's *Republic*, which is usually 'regarded as the proverb of an *empty ideal*'; *PR*, preface, 14. Cf. *PR* §185A.

²⁶ This is the primary aim declared by Henrich [1971, 1988] 2010, 7. For a recent example invoking contextualism without delivering quite what is promised, see Boyd 2019. Dieter Henrich also launched a research programme into the collaborative origins of early German idealism known as *Konstellationsforschung*; see Henrich 1991, 2004; and Mulsow and Stamm 2005. Henrich and Pinkard 2000 in particular argue that Hegel was strongly influenced by his friend Hölderlin. Further examples of the (very understandable) focus on the idealist context and especially the Kant-Hegel nexus include Kelly 1969; Priest 1987; Pippin 1989, 1997; Pinkard 2002; Henrich 2003; Sedgwick 2012 and the *Hegel Bulletin*'s virtual special issue on 'Hegel and Kant' at www.cambridge.org/core/journals/hegel-bulletin.

not exhaust the wide range of Hegel's engagement. Apart from biographies, book-length studies of a contextualist bent have hitherto mostly concentrated on Hegel's life and thought up to 1806/7, ending with his move from Jena in the aftermath of Napoleon's triumph.²⁷ Significantly, this is before Hegel took on the offices of newspaper editor in Bamberg, headmaster of a *Gymnasium* in Nuremberg (not to mention his marriage there) and professor in Heidelberg and Berlin where, between 1818 and his death in 1831, he reached the peak of his career. Existing scholarship, therefore, does not satisfy the demand for insight into the immediate context in which the *Philosophy of Right* was produced and published. Although hotly debated, Hegel's theory of the state has received comparatively little examination in terms of its composition. In other words, the fact that a choice lies behind every paragraph Hegel wrote has too often been overlooked. That is where the contribution of this book is located, aiming to provide a (self-consciously partial) corrective by situating Hegel's political thought, and especially its institutional dimension, in its historical context.

The general premise informing my approach is that even the most systematic of thinkers do not conceive their ideas in a vacuum but develop their positions in interaction with the world around them. Accordingly, 'even the most abstract works of political theory are never above the battle'.²⁸ If this is true, then an adequate understanding of what any writer meant to express cannot be reached by the mere study of their own writings but must involve examination of the intellectual and political world they inhabited. If we accept the idea that 'to speak is to act too', expressed by Hegel himself in one of his lectures, the question arises as to what he was doing in the *Philosophy of Right*.²⁹ In order to find an answer, we must begin to consider his thinking in relation to others and to understand his writings as interventions in contemporary debates. Accordingly, I want to turn the spotlight on Hegel's rhetorical and polemical interventions and show him engaged in dialogue. The following may thus be seen as an exercise in 'eavesdropping on the conversations

²⁷ This is the case with Harris 1971, 1983; and Dickey 1987. Waszek 1988 forms an exception in this respect but, as his book's title (*The Scottish Enlightenment and Hegel's Account of 'Civil Society'*) truthfully indicates, its preoccupations are rather different from those pursued here. See also Toews 1980. The best biographies remain Rosenkranz 1844 and Pinkard 2000.

²⁸ Skinner 2008, xv. See also Skinner 2002, vol. 1: *Regarding Method* and Tully 1988, for a start.

²⁹ VPR24, 1467.

of the past'.³⁰ My emphasis is on the reconstruction of the contemporary political context and Hegel's intervention in it. Rather than offering a direct philosophical evaluation of Hegel's position on particular issues, I provide the groundwork for doing so by scrutinising the original context of the *Philosophy of Right*.

Hegel's interaction with broader public debate has been greatly neglected, yet his biography confirms the need to replace the image of the absent-minded professor of philosophy. To begin with, Hegel was an acute observer with a great appetite for news from near and far, describing the daily reading of newspapers as a 'realistic morning blessing' and himself as one who 'follow[ed] world events with curiosity'.³¹ He also was an active publicist himself, contributing reviews and articles as well as (co-)editing *Kritisches Journal der Philosophie* in 1802–3, the *Bamberger Zeitung* in 1807–8 and *Heidelbergsche Jahrbücher der Litteratur* in 1816–18. Long before the *Jahrbücher für wissenschaftliche Kritik* were founded in 1827, Hegel had entertained the wish to establish a literary organ of his own, as testified by his 'Maxims of the Journal of German Literature' from 1807 and his draft 'On the establishment of a critical journal of literature' from winter 1819/20.³² Accordingly, he must have closely surveyed the landscape of periodicals throughout his career.

This inclination towards publicist activity notwithstanding, Hegel's political thought has hitherto hardly been placed in the context of contemporary public discussion or the period's broader political context. By doing so, this study provides relief and contrast to Hegel's thinking, explores possible sources and suggests interlocutors, intellectual allegiances and targets. Insofar as practicable, I have endeavoured to render such links tangible, for instance, by recourse to Hegel's correspondence or the auction catalogue of his library. At the same time, it would frequently be justified to reverse the burden of proof and assume Hegel's familiarity with the work of contemporary writers,³³ given his intellectual occupations, his involvement with the broader publicist landscape and the dynamics of academia then as now.

³⁰ The image was coined by John W. Burrow; see Burrow 2006, 22–3 and Cuttica 2014. For more, see Thomson 2012 and Whatmore 2016 on *What Is Intellectual History?*.

³¹ *GW*5, 493; *BI*, 145; Hegel to I. Niethammer, 20 February 1807. Buck-Morss 2000 provides a memorable demonstration of that in the case of 'Hegel and Haiti'.

³² These drafts are contained in *GW*4, 507–14 and *GW*15, 147–203, respectively.

³³ As suggested by D'Aprile 2014, 141 or MacGregor's 2014 (chapter 4) claim that Hegel knew Tom Paine's writings. (Incidentally, I have found that Hegel personally knew the German translator of *The Rights of Man*, Meta Forkel/Liebeskind, whose house he frequented during his time in Bamberg.)

Although Hegel insisted that philosophy was not for everybody,³⁴ he had a clear sense of its practical importance. This is conveyed impressively in his essay on natural law from 1802, where he states that ‘nothing has to be so applicable to reality ... as that which comes from philosophy’.³⁵ There can be little doubt that Hegel had something meaningful to say, and consequently it seems not unreasonable to infer that he wanted to make himself understood, despite the fact that his use of language is and was widely considered peculiar.³⁶ After all, Hegel spent his life as a teacher and was recognised as a fascinating one, his notorious lecturing style notwithstanding.³⁷ Already in his youth, he had envisioned himself as an ‘educator of the people’.³⁸ From the moment of his graduation, he pursued this path, be it as a private tutor, at grammar school or at university, and arguably even when he edited Bamberg’s local newspaper for a year. On the very first page of the *Philosophy of Right*, Hegel explains that it was written as a ‘textbook’ for university students and with reception by ‘the wider public’ in mind.³⁹ Given how easily this has been overlooked, the following truism offered by one of his contemporaries bears repeating: ‘Whoever lets a book be printed, dedicates it to the public. It is the entire people to whom he communicates his thoughts.’⁴⁰ This quotation is also an apt reminder that distinctions between literary genres may be largely artificial or, at least, historically variable and adherence to them not conducive to comprehensive analysis. Accordingly, I have tried to bridge the divide commonly established between what are considered philosophical works proper, on the one hand, and rather occasional writings, on the other. It is hoped that the result may convince readers of the connectedness and mutual relevance of these different kinds of text, whose differences may be gradual rather than categorical.

³⁴ Besides several statements to that effect in *PR*, he chose as epigraph for his 1812 *Science of Logic* Cicero’s ‘Est enim philosophia paucis contenta iudiciis, multitudinem consulto ipsa fugiens, eique suspecta et invisā’; *GW*21, 4.

³⁵ *GW*4, 471. Cf. Hegel 1999, 164.

³⁶ As attested by the existence of ‘Hegel dictionaries’, such as Inwood 1992; Cobben et al. 2006; and Magee 2010. Virtually all contemporary reviewers of *PR* (collected in Riedel 1975) remarked upon the peculiarity of Hegel’s terminology and even the editor of the 1833 edition admits to Hegel’s ‘distinguishing artificial language’; Gans 1833, XVII.

³⁷ See, for instance, Heinrich Gustav Hotho’s classic account of Hegel at the lectern in *BZ*, 246–50.

³⁸ Pinkard 2000, 15–17. The concern with the education of mankind was especially nourished by the young Hegel’s engagement with the work of Gotthold Ephraim Lessing. On ‘Hegel as Political Educator’, see Villa 2017, chapter 3.

³⁹ *PR*, preface, 5. ⁴⁰ Grävell 1816, III.

Book and Lectures

At this point, a word about the textual basis for my analysis seems to be in order. Beyond Hegel's publications, I have drawn on his manuscripts, correspondence, notes and excerpts to reconstruct as detailed a picture as possible. A further notable feature of this book is the extensive use of transcripts of Hegel's lectures on the philosophy of right as published in the critical edition (*Gesammelte Werke*) in 2013 and 2015. Clarifying their relation to the *Philosophy of Right* as the central text thus seems worthwhile. It is likely that Hegel completed *Naturrecht und Staatswissenschaft im Grundrisse. Grundlinien der Philosophie des Rechts* on 25 June 1820, the date of the preface. Published by the Nicolaische Buchhandlung in Berlin, the book was dated 1821 but already circulating by autumn 1820. It appeared in the bookseller's list for an annual fair in October⁴¹ and on the tenth of that month, Hegel referred to the *Philosophy of Right* as a work he had 'just published'.⁴² As his correspondence documents, he sent free copies to several contacts then, including old friends, colleagues and students as well as his superiors in the Prussian bureaucracy. Response letters show that the book was already available for purchase at the same time.⁴³

In the first sentence of the preface, Hegel informs the reader that the 'immediate occasion' for the publication was the need to provide a 'text-book' to accompany his lectures on the philosophy of right.⁴⁴ In fact, the very title pages speak of an outline (*Grundrisse/Grundlinien*) 'for use in his lectures'. Just a cursory look at academic books of the period reveals that it was common for professors to write compendia for their lectures. Like them, Hegel would dictate to his students before elaborating orally on the material under discussion.⁴⁵ The editors of Hegel's first collected works in the 1830s considered Hegel's lectures significant enough to include many volumes based on transcripts of his lectures on subjects from aesthetics to philosophy of religion next to his published works. Equally, the present general editor of Hegel's collected works has emphasised that Hegel's lectures were the very medium in which he developed his philosophy, a 'system in lectures', and that the *Philosophy of Right* is the immediate fruit of the three previous lecture cycles on the topic.⁴⁶ If we discount the

⁴¹ *GW*14,3, 858. ⁴² *BII*, 237: Hegel to K. Altenstein, 10 October 1820.

⁴³ *BII*, 238: H. Hinrichs to Hegel, 4 October 1820; *BII*, 278: N. Thaden to Hegel, 8 August 1821.

⁴⁴ *PR*, preface, 5.

⁴⁵ This procedure is, for instance, described in the preface to Haller [1820] 1964, XXXV.

⁴⁶ Jaeschke 2001, 23. Cf. Jaeschke 2013.

lectures on the philosophy of right begun only a few days before his sudden death in November 1831, Hegel lectured on the topic six times, at Heidelberg in 1817/18 and at Berlin in 1818/19, 1819/20, 1821/22, 1822/23 and in 1824/25.

The original book is an octavo and contains 355 pages organised in 360 paragraphs (§) and associated remarks (*Anmerkungen*). Yet most present-day readers are familiar with the *Philosophy of Right* in the shape that Eduard Gans, who had lectured on it in Hegel's stead during the late 1820s, gave the second edition of 1833, two years after Hegel's death. For the sake of intelligibility, Gans took considerable editorial liberties and augmented the book with almost 200 additions (*Zusätze*), based on transcripts of Hegel's lectures from 1822/23 and 1824/25. The desired effect was to illustrate the paragraphs' contents, 'often saying the same thing, just more clearly and popularly' and 'often through examples'.⁴⁷ Disagreeing manifestly with the notion that textual accuracy does not matter for interpretation,⁴⁸ I have taken great care to indicate the exact provenance of quotations, discussed changes introduced by Gans and cited directly from the lecture transcripts in the critical edition.

As Hegel partly dictated his lectures, the transcripts provide a generally reliable and authentic source, yet literal accuracy cannot be certified. The evident authenticity problem was already diagnosed by some of Gans's contemporaries, such as Karl August Varnhagen, who distinguished strictly between the published *Philosophy of Right* and additions from the transcripts.⁴⁹ As a letter from 1824 shows, Hegel was well aware that 'college booklets of my lectures circulate' and he may sometimes have drawn on them himself.⁵⁰ While he obviously saw no problem in the practice, however, he naturally disowned responsibility for their precise contents. That the students' voice may subtly have been registered next to Hegel's is, for instance, betrayed by occasional phrases like 'here lecturer talks about', 'Hegel thinks', 'Hegel declaims badly' or 'I'm tired'.⁵¹

There are also notable differences in quality between the various transcripts.⁵² In fact, those produced by Heinrich Gustav Hotho and Karl Gustav Julius von Griesheim, which Gans used for the 1833 edition, seem to correspond rather closely to the handwritten notes in Hegel's personal

⁴⁷ Gans 1833, XV.

⁴⁸ This position is taken by the editors of the Suhrkamp edition of Hegel's collected works, e.g. in Hegel 1986c, 534.

⁴⁹ Lucas 1986, 191. ⁵⁰ *BIVb*, 51: Hegel to F. Baader, 19 January 1824.

⁵¹ *VPR17*, 25; *VPR18*, 322, 292, 305.

⁵² For more extensive commentary, see now the editor Klaus Grotzsch's 2019 report: *GW26.4*.

copy. (Unfortunately, the latter cover paragraphs 1 to 180 only; if Hegel ever drafted notes on the sections *civil society* and *the state*, they seem lost without trace.)⁵³ In contrast, sometimes considerable differences in wording exist between two recordings of the same lectures in 1819/20 by Johann Rudolf Ringier and an anonymous student. Carl Gustav Homeyer's transcript from the previous academic year is especially sketchy; many sentences are incomplete, punctuation is often missing and the formal paragraph text is barely reproduced, without the explanation Hegel would have added. Nor are the various lecture transcripts equally comprehensive in terms of the subject matter covered and the ones pre-dating publication of the *Philosophy of Right* are arranged differently. The anonymous transcript for 1821/22 ends on §260, where the section on constitution starts, and that for 1818/19 is very brief, with only twenty-eight paragraphs on *the state*.

Re-discovered half a century ago, Peter Wannenmann's transcript of Hegel's lectures on *Natural Law and Science of State*, given in six hourly instalments per week at the University of Heidelberg in the winter of 1817/18, has been considered particularly interesting as it contains much detail on institutional arrangements.⁵⁴ This led Karl-Heinz Ilting to conclude that the *Philosophy of Right* constituted an expression of accommodation to censorship, but his claims were swiftly followed by refutation.⁵⁵ While certain aspects are more explicit in the lectures, Hegel's basic positions remain unchanged and the fact that he is more outspoken there may simply be due to academic conventions. With claims of a significant difference between the book and the lectures effectively disproved, the *Philosophy of Right* as published in 1820 constitutes an authoritative textual basis for the analysis of Hegel's political thought. Philological caveats notwithstanding, the lecture transcripts present an invaluable additional source when treated with some caution.

A Note on Labels

In 1797, Friedrich Schiller famously asked where the country called 'Germany' could be found.⁵⁶ Of course no corresponding political entity existed at the time, yet that did not prevent contemporaries from using the

⁵³ *GW*14,3, 1024–25.

⁵⁴ This text has also been translated into English in its entirety, albeit very freely; Hegel 1995.

⁵⁵ Ilting 1973; see Horstmann 1974 for a prompt refutation. More on this in Chapter 5.

⁵⁶ Schiller 1797, 222; cited in Pinkard 2002, chapter 1.

name widely to refer to the various German-speaking territories of Central Europe, and I follow their usage. Hegel and his contemporaries also hardly differentiated between England and Britain. Convinced that their imagination was more important to political argument than historical realities, I have not presumed to rectify this conflation.

Historians have routinely referred to the period between 1815 and 1830, which roughly coincides with the period under investigation here, as ‘the Restoration’. Undeniably, this bears some relation to contemporary perceptions and demands, visible in the reference of Hegel’s arch-rival Jakob Friedrich Fries to a ‘time of restoration’ or the title of Carl Ludwig von Haller’s *Restauration der Staats-Wissenschaft*, featured in later chapters of this book.⁵⁷ Characterising the dominant political mood as reactionary, however, this denomination may be too monolithic to describe meaningfully a time that saw reforms and immense transformation as well.⁵⁸ In Germanophone historiography, the entire period between the Congress of Vienna and the March Revolution of 1848 is also commonly referred to as *Vormärz*. This very term, literally meaning ‘pre-March’, illustrates how these years have often been treated as a transitional period rather than on their own terms. It has proven tenacious even among scholars who reject such a retrospective view.⁵⁹ Instead, I have chosen to speak simply of the early nineteenth century or the immediate post-Napoleonic period, which seems more justifiable with respect to the experience of contemporaries.

For similar reasons, I have generally tried to make as little use as possible of the rather intractable labels ‘liberal’ and ‘conservative’. These have commonly been attached to those authors featuring in my discussion who are better known to scholars of the period, such as Friedrich Buchholz, Friedrich Christoph Dahlmann and Johann Friedrich Benzenberg, on the one hand, and Friedrich Gentz, Adam Müller and Carl Ludwig von Haller, on the other. From time to time, individual scholars have suggested that such descriptors present a reductionist point of view, especially when applied to the period concerned here.⁶⁰ Modern political vocabulary was just emerging at the time, which constitutes ‘a

⁵⁷ Fries 1816, 8 [*Wiederherstellung*]; Haller 1816–34. For a conceptual history of the term, see Kondylis 1994.

⁵⁸ See Hobsbawm 1962; Sheehan 1989; Broers 1996; Ullmann and Zimmermann 1996; Clark 1997; Langewiesche 2007.

⁵⁹ See, for instance, Conze and Schieder 1970; Nipperdey 1983/2014; Koch 1985; Wehler 1987b; Hardtwig 1998; Geisthövel 2008; the internet portal www.historicum.net; or, most recently, Bleek 2019.

⁶⁰ See McClelland 1971, 56; and Golf-French 2018 for two examples across the past fifty years. Bourke 2018 makes the point especially powerfully.

crucial phase in the emergence of the modern state' and lies at the heart of what Reinhart Koselleck has described as *Sattelzeit*.⁶¹ The ideological categories familiar to us were essentially contested from the start, as demonstrated by Hegel's own use of 'liberal' in the positive and 'liberalism' in the negative, further explored in Chapter 2.⁶² To some extent, their careful use may help understanding, but it also risks the retrospective creation of traditions against historical actors' own consciousnesses.⁶³ In the following, I have therefore attempted to focus on concrete aspects of a person's thinking instead, leaving more room for nuance, complexity and contradiction.

Clearly, much of Hegel's reception over the last two centuries has revolved precisely around the affixing of these labels and the question of whether Hegel was a liberal or conservative still holds a curious fascination. This is closely bound up with the (as I argue in Chapter 1) undue attention paid to his relation to the Prussian state. Although unsustainable in the face of historical evidence, the image of Hegel as 'the Prussian state philosopher' has proven extraordinarily tenacious.⁶⁴ Such eminent figures as Hannah Arendt, Isaiah Berlin, Karl Popper and Bertrand Russell are among those who have decried Hegel as an enemy of liberty and quasi-totalitarian.⁶⁵ Yet the circumstance that the most vehement rejections should have occurred in the years directly following the Second World War speaks volumes about the manner in which Hegel's political philosophy was approached for a long time.⁶⁶ Its retrospective judgement necessarily resulted in highly ideological interpretations, as evidenced by the suggestive book title *Von Hegel zu Hitler*.⁶⁷ In the following pages, Hegel and his political thought are approached against the backdrop of his own historical context instead. In line with my insistence on the

⁶¹ Laven and Riall 2000, 7–8; Koselleck 1972. For recent considerations on the *Sattelzeit* notion, see Décultot and Fulda 2016 and Williamson 2018.

⁶² Reluctant to relinquish the notion of a distinct liberal tradition, several historians have recently emphasised its inherent pluralism and global reach; see Sluga and Rowse 2015; Rosenblatt 2018; and Selinger and Conti 2020.

⁶³ The problematic nature of many accounts of 'liberalism' and 'conservatism' is effectively highlighted by Bell 2014 and Bourke 2018.

⁶⁴ See Haym 1857 for the origin of this much-repeated stereotype. In 1839, K. E. Schubarth had still pursued an opposite strategy of discreditation, writing *Über die Unvereinbarkeit der Hegelschen Staatslehre mit dem obersten Lebens- und Entwicklungsprinzip des preußischen Staats*. For a concise rebuttal of the Prussia myth, see, e.g., Leopold 2007, 57–60; earlier rejections include Kaufmann 1956, 1970; D'Hondt [1968] 1988. See also Stewart 1996, *The Hegel Myths and Legends*.

⁶⁵ Popper 1945; Russell 1945; Arendt 1951; Berlin [1952] 2002.

⁶⁶ Notoriously, Karl Popper described *The Open Society and Its Enemies* as his 'war effort' (Popper [1974] 2002, 131).

⁶⁷ Kieseewetter 1974. Losurdo 2014 critically re-employs it.

need to humanise Hegel, I have also refrained from using the term 'Hegelian' altogether.

Freedom and Institutions

A book concerned with Hegel's constitutional thinking, which has not been treated at such length since the appearance of Shlomo Avineri's *Hegel's Theory of the Modern State* in 1972, will be expected to say a few words about its place within Hegel's broader philosophical enterprise early on. The best place to start is his understanding of the role of philosophy, which is most often described with a single keyword – reconciliation.⁶⁸ At the very end of his *Lectures on the History of Philosophy*, for example, Hegel is recorded to have said that 'the *ultimate* goal and *interest* of philosophy is to reconcile thought, the Concept, with actuality'.⁶⁹ Similarly, he states in the preface to the *Philosophy of Right* that 'to comprehend what *is*, is the task of philosophy' and that 'this rational insight is the *reconciliation* with actuality'.⁷⁰ The way in which philosophy reconciles us with the world is thus by demonstrating its inherent rationality. For, as the famous quotation from the lectures has it, 'I is at home in the world when it knows it, even more so when it has understood it'.⁷¹ By way of thinking (the process of 'complete appropriation'), all foreignness is overcome and the sense of contingency sublated.⁷² The world is thus made one's own, invested with 'harmony and coherence'.⁷³ Importantly, however, this does not mean an end to conflict and unhappiness; Hegel suggests as much when he speaks of 'recogniz[ing] reason as the rose in the cross of the present'.⁷⁴

It is the task of philosophy to show the modern social world as a 'system of right' that is in fact 'the realm of actualised freedom' (§4). Both coincide with the state, which according to Hegel is 'the actualisation of right' and the context in which alone full freedom is possible, as we shall see shortly.⁷⁵ In this way, Hegel's book seems quite aptly named *Philosophy of Right*, although several contemporary reviewers found Hegel's choice of title inadequate and one suggested that it should rather be called a '*philosophical theory of the state*'.⁷⁶ Indeed, Hegel declares the aim of his book to be 'nothing other than the attempt to *comprehend* and *portray* the

⁶⁸ See, for instance, Hardimon 1994 (esp. chapter 3) and Wood 1990, chapter 4.

⁶⁹ Hegel 1986c, 455. ⁷⁰ *PR*, preface, 15, 16. ⁷¹ *VPR*24, 1069 – *PR* §4Z.

⁷² *VPR*24, 1068. ⁷³ Plant 1973, 135.

⁷⁴ *PR*, preface, 15–16. This has rightly been stressed, for instance, by Hardimon 1994, 90ff., 117 and Waszek 1988, 5.

⁷⁵ *VPR*19, 333. ⁷⁶ [Paulus] 1821, 396. See also Z[achariae] 1822, 108.

state as something rational in itself'.⁷⁷ (And the book's very last paragraph suggests that Hegel considered his enterprise successfully completed.) As he puts it in the preface, 'this rational insight is the *reconciliation* with actuality', is what overcomes the separation between the world and human consciousness.⁷⁸ In contrast to 'positive jurisprudence', which perpetuates existing laws, philosophy 'contemplate[s] right thoroughly in order to see its rationality and non-contingency'.⁷⁹ It thereby fulfils a thoroughly modern need, emerged with increasing freedom of thought. In contrast to the 'particularity of rights' that characterised former times, Hegel maintains, right now flows from general principles and that marks a new epoch in world history, begun around the time of the French Revolution.⁸⁰

Human freedom is at the heart of this new outlook and central to Hegel's conception of the philosophy of right. Indeed, it is often seen as the guiding concern of his entire philosophy, and it certainly is true to say that for Hegel, 'human freedom is the basis of social and political legitimacy'.⁸¹ Right, as Hegel explains in the introduction to his *Philosophy of Right*, is freedom as idea (§29). In other words, freedom is actualised by right and has its existence only there, for the 'system of right is nothing but [the] system of freedom that actualises itself'.⁸² Hegel's concern is to demonstrate how this happens. He repeatedly explains that philosophy of right is concerned with 'knowledge of the concept of freedom and its development', and his book and lectures are meant to convey precisely that.⁸³ The declaration given in the earliest lecture transcript leaves no doubt: 'To get to know the actualisation of freedom . . . is the purpose of our science.'⁸⁴

The sphere in which right operates, and freedom is actualised, is the state. In the paragraph that opens the section of the *Philosophy of Right* devoted to the constitution, Hegel writes that 'the state is the actuality of concrete freedom' (§260). This confident statement encapsulates Hegel's characteristic view of the state as the site where human freedom is realised and sets the tone for his account of 'the rational constitution' (§286A), meaning one that accomplishes this. It is also exclusive, meaning that real

⁷⁷ *PR*, preface, 15. ⁷⁸ *PR*, preface, 16; cf. *VPR*19, 340. ⁷⁹ *VPR*22, 772. ⁸⁰ *VPR*22, 772.

⁸¹ Patten 1999, 135. For further discussions of freedom as the central concern of Hegel's thought, see Taylor 1975, 1979; Franco 1999; Neuhouser 2000; Peperzak 2001; Losurdo 2004; Pippin 2008; Honneth 2011/2014; Vieweg 2019. Tellingly, the International Hegel Congress celebrating his 250th anniversary was entitled *Hegel and Freedom* too.

⁸² *VPR*19, 340. Cf. *VPR*17, 8; *VPR*22, 774; *VPR*24, 1072 and to *PR* §4 as cited above.

⁸³ *VPR*22, 775. Cf., e.g., *VPR*31, 1493. ⁸⁴ *VPR*17, 11.

freedom is only possible within the state and cannot be found outside it. By concrete freedom, Hegel means a combination of two complementary dimensions usually described as objective and subjective freedom.⁸⁵ This is very clear from the *Lectures on the Philosophy of History*, where it says that ‘freedom has a dual determination’ – one concerns its content (objective), the other its form (subjective).⁸⁶ Both are only attainable for individuals living in states. The former, sometimes also known as ‘substantial freedom’, hinges on the pursuit of decisions that are rational, independent of reflection, ‘one’s own insight and one’s own will’.⁸⁷ Hegel finds this kind of freedom already present in the Greek states of antiquity, which lacked the other kind of freedom that is all about reflection and characteristic of modern states. ‘It is mainly this *subjective* or *moral* freedom’, Hegel explains in the *Encyclopedia* of 1830, ‘which is called freedom in the European sense’ and distinguishes modern states.⁸⁸ This topic, and especially Hegel’s identification of the representative system with subjective freedom, will receive more sustained attention in Chapter 2 and resurface repeatedly throughout the following ones. Given this book’s focus on Hegel and the representative constitution, it seems justified to put the emphasis on the subjective dimension of Hegel’s conception of freedom without denying the considerable philosophical interest of his dual account or downplaying the importance of the objective dimensions of freedom. John Findlay’s observation that ‘Hegel’s thought being thus varied, what one says of it must be largely a matter of emphasis’ certainly applies.⁸⁹

In practice, freedom is realised through the institutions of modern society. This is hardly controversial as a statement about Hegel’s philosophy, yet most commentators operate with a rather limited notion of ‘institutions’. It seems common to stop at institutions at a very abstract level, such as the three constituent parts of Hegel’s *Sittlichkeit* – the family, civil society and the state – or private property.⁹⁰ If one accepts, however, that Hegel is ‘proposing ethical life as a constitutional condition’, as a recent commentator has put it, then I think we need to pay more attention to details.⁹¹ The view that ‘so far as Hegel’s conception of freedom is concerned, the particular institutional arrangements he prefers are not

⁸⁵ Alternative accounts of Hegel’s dual concept of freedom are provided by Patten 1999 and Neuhaus 2000; see further Pippin 2008.

⁸⁶ *VPG*, 529. ⁸⁷ *VPG*, 135. ⁸⁸ *GW*20, 489 (§503A). ⁸⁹ Findlay 1958, 348.

⁹⁰ For instance, Neuhaus 2000, 3 writes that ‘Hegel’s aim in his social theory is to defend what he takes to be the three central social institutions of the modern era’. Patten 1999 discusses private property as ‘central amongst the institutions which Hegel thinks necessary for personality’ (144).

⁹¹ Thornhill 2013, 70.

crucial' appears misguided, for it is precisely through these institutions that freedom is realised and one can hardly hope to understand the one without the other.⁹² Constitutional arrangements are crucial for the achievement of Hegel's aims and thus form an integral part of his philosophy, not accidental or irrelevant trappings. One could also say that Hegel wants to reconcile his contemporaries to constitutional monarchy and the representative system. Therefore, I propose to look at the concrete institutional arrangements he defends (such as the bicameral Assembly of Estates, for example) and see how they contribute to Hegel's aim.

It remains to address the apparent tension between Hegel's assertion that philosophy should not make prescriptions and what look exactly like recommendations for political practice. In the sentence immediately following his purpose statement, Hegel explicitly says that his endeavour is far removed from 'constructing a state as it ought to be'.⁹³ Similarly, the famous image of the owl of Minerva (that only flies at dusk, symbolising philosophy's alleged retrospectiveness) at first sight seems to restrict the task of philosophy to description.⁹⁴ By portraying the various institutions discussed in the following chapters as rational, however, Hegel is certainly making the case for them and, in effect, gives political recommendations. In this way, his book does have normative content, and his seeming detachment cannot be accepted without reservation. To some extent, his claim to the contrary in the preface may be seen as a means of deterring the censors from his work (more on this in Chapter 5). Still, I think, Hegel's disdain for 'ultra-wisdom' and, for instance, Fichte's passport regulations is real; he clearly saw no need to regulate everything and explicitly demanded liberality in this context.⁹⁵ Philosophy should concern itself with matters of structure, including institutions and procedure, but not concrete implementation. Where and how to draw the line, however, remains unclear.

In the preface to the *Philosophy of Right*, Hegel explicitly addresses the 'relation of philosophy to actuality' and in the 1821 lectures, he speaks even more pointedly on the 'relation of the philosophy of right to existing states, constitutions, governments'.⁹⁶ Positing 'eternal determinations of justice [and] the state', it leads to 'comparisons of the absolute with the existing' as a matter of course.⁹⁷ But Hegel sharply separates his philosophical enterprise from mere 'reasoning' about existing states and what he calls 'the

⁹² Singer 1983, 39. ⁹³ *PR*, preface, 15.

⁹⁴ See Ware 1996 for an interesting discussion of what he calls 'Hegel's Metaphilosophy'.

⁹⁵ *PR*, preface, 15. Cf. *GW*4, 56–57: Hegel had already criticised Fichte's passport police in his 1801 *Differenzschrift*. See Fichte 1797, 146 (§21).

⁹⁶ *PR*, preface, 13; *VPR*2I, 597. ⁹⁷ *VPR*2I, 597.

worldmaker's understanding'.⁹⁸ Repeatedly, he disavows considerations of utility (*Raisonnement*, in his parlance) and instead embraces the pursuit of rational justification alone.⁹⁹ Philosophy is only concerned with the 'eternal inner idea' of the state. It is this idea, Hegel insists, that 'alone deserves the name of actuality'; far from a mere ought, the idea *is*.¹⁰⁰ That also points us towards the infamous and much-discussed double dictum in the preface to the *Philosophy of Right*: 'What is rational is actual; and what is actual is rational'.¹⁰¹ Yet this pronouncement rests on a crucial distinction between existence and actuality, which Hegel emphasised when he clarified the double dictum's meaning in response to contemporary critics.¹⁰² In the third edition of the *Encyclopedia* (1830), he asks 'who is not clever enough to see much in his environment which is not in fact as it ought to be?'.¹⁰³ And in his final lectures on the philosophy of right, he is explicitly recorded as having said that 'what is actual is rational. But not everything that exists is actual'.¹⁰⁴

While far from complacency with things as they are, Hegel's work is clearly pervaded by a fundamental optimism about the progress of humanity, neatly encapsulated in the notion that 'what is rational must happen'.¹⁰⁵ Rather than a mere large-scale empirical generalisation, this conviction is philosophically grounded in Hegel's idealist standpoint and its application to history. While the natural world embodies an 'ossified intelligence' and thus lacks true history,¹⁰⁶ the social world is being transformed successively by the Idea towards the achievement of self-consciousness and freedom. Fundamentally, historical progress is for Hegel a rational process, tending towards the 'actualization of the universal spirit' (§342). In fact, spirit itself consists in movement and progress, and to discern 'the spirit of the world' is exactly what philosophy does, according to Hegel. Consequently, he rejects the notion of philosophical blueprints and insists that 'science does not construct an ideal'.¹⁰⁷ At the same time, the active role that Hegel accords to theories is demonstrated, for instance, by his acknowledgement of the role played by ideas (Rousseau's in particular) in the French Revolution (§5A). The lectures

⁹⁸ VPR2I, 598. ⁹⁹ For instance, at PR §281A; VPR19, 340; VPR2I, 597. ¹⁰⁰ VPR2I, 598.

¹⁰¹ PR, preface, 14.

¹⁰² It should be noted, however, that Hegel also distinguishes between 'Daseyn' and 'Existenz' (GW20, 45). A good way into the scholarly discussion about the *Doppelsatz* is provided by Stern 2006, who offers a 'neutral' alternative to both conservative and progressive interpretations. See also Stewart 1996, Part 1.

¹⁰³ GW20, 46 (§6A). Cited from Hegel 1991, 390. ¹⁰⁴ VPR3I, 1494. ¹⁰⁵ VPR17, 164.

¹⁰⁶ Cited in Leopold 2007, 41, who points out Hegel's endorsement of Schelling in this respect.

¹⁰⁷ VPR19, 337.

explicitly record that theories may do great good as well as great harm, and they seem to play a progressive role.¹⁰⁸ Yet Hegel distances himself from theory too: the Idea is more than that, and philosophy ‘knows that only that can exist which is present in the general *consciousness* spirit of a people [*sic*]’.¹⁰⁹ Hegel was convinced that ‘the world can only be grasped in the idea’, wherefore philosophers need to explore the rational, which is actual, rather than engage with utopian ideals.¹¹⁰ As we have already seen, rational insight into that which is substantial in the world enables reconciliation.

At the same time, Hegel clearly opposes stopping at what exists. Modern humans do not just submit to authority but rely on their own reason for judgement, and conflicts may well arise between what is and what ought to be. If and how such tensions may be resolved in specific cases will need to be addressed as they arise. What is clear is that Hegel raises an enormous claim to validity, claiming exclusive access to insight for scientific or philosophical thinking. This provides all the more reason for looking at his work and thought in context.

Plan of the Book

This book makes the case for reading Hegel’s *Philosophy of Right* as a contribution to the German constitutional debate in the immediate post-Napoleonic period. From the contextualist premise outlined above, it is but a small step to arguing that Hegel’s book constituted a timely intervention in those discussions that dominated intellectual and public life in the years immediately preceding its publication. Chapter 1 shows that these revolved around the constitutional question as the central and definitive element of political discourse in Germany, and decidedly not Prussia alone, at the time and that Hegel consciously entered this constitutional debate. His characteristic contribution is then explored throughout the following chapters, which could broadly be distinguished into two parts. Whereas the first looks at ideas on the foundations of the state (Chapters 2 and 3), the second is especially concerned with debates over the institutional form of popular representation (Chapters 4 and 5).

Chapters 2 and 3 are concerned with Hegel’s conception of the state as an organism, with the former addressing its implications for constitutional origins and change and the latter the arrangement of power. Chapter 2 places Hegel’s views on the nature of constitutions in the context of contemporary discussions of what may be termed constitutional

¹⁰⁸ VPR22, 773.

¹⁰⁹ VPR19, 338.

¹¹⁰ VPR19, 335.

transferability. In particular, I identify the target of his polemical claim that constitutions cannot be 'made' and argue that his opposition to contractarianism supports a specific kind of constitutionalism while discrediting another. The related discussion of Hegel's constitutionalist approach to world history introduces his identification of the representative system with subjective freedom, which forms a recurring theme throughout the book. Chapter 3 is dedicated to an analysis of the distribution of power within Hegel's model of constitutional monarchy or what he calls the rational constitution. Here, I address his peculiar separation of powers, the role played by the monarch, the exercise of government and the competences Hegel envisioned for the Assembly of Estates, with which the two subsequent chapters are principally concerned.

The form and nature of political representation are the subject of Chapters 4 and 5. Chapter 4 analyses Hegel's reasons for choosing the bicameral system at a time when it was anything but widespread and in fact hotly contested. In the process, I shall especially explore arguments about the role and composition of the first chamber, which corresponds to what is nowadays conventionally called the second chamber and often dubbed a 'house of review'. In parallel, Chapter 5 focuses on the other, elected chamber and discusses Hegel's characteristic notion of a representation of interests, along with the broader societal conditions for successful representation. Crucial questions about the nature of representation will thus be addressed in the context of Hegel's institutional design for popular participation within the rational constitution. Finally, I offer some conclusions drawn from the analysis, along with a sense of their relevance to Hegel studies and reflection on the broader implications for scholars of history, politics and philosophy.

Overall, this book is intended not only to render Hegel's thought more intelligible but to paint a broader picture and provide a study of intellectual life in early nineteenth-century Europe. Promoting appreciation for the situatedness and contingency of Hegel's thought, the following exploration of ideas on government and representation may also help to increase sensibility about our own political commitments. Sharpening our sense of possibility through a confrontation with the past and alternative ways of thinking, it encourages critical reflection on ideas and ideals taken for granted today. This history of thinking about the state in the early nineteenth century, then, invites all of us to think anew about the nature and value of a representative constitution.

CHAPTER I

The Constitutional Question in Post-Napoleonic Germany

Man wants lawful constitution, not just because of its worth, but because of his dignity. That's what is moving our times.

J. F. Benzenberg, *Wünsche und Hoffnungen*

The Demand of the Age

The problem of the constitution, understood broadly and in an organic sense as the way in which the state and its institutions are organised and function, is central to Hegel's legal, social and political thought. A lifelong concern, it occupied him from his very first publication, which discusses the constitutional struggles between the Vaud and Bern, to his very last, where he comments on British parliamentary reform.¹ In his capacity as editor of the *Bamberger Zeitung*, Hegel had covered the introduction of the very first German constitution in Napoleonic Westphalia.² Significantly, the constitutional question acquired a particular relevance in the years immediately preceding the publication of the *Philosophy of Right* in 1820, which saw 'the first wave of constitutionalisation' sweep the German lands.³ By this time, it had become the central question for the German states and large parts of the European continent, which actively sought reorganisation after Napoleon, both internally and collectively.⁴ Contemporary writings abound with references to 'the now universal pursuit of constitution' or 'the peoples' struggle for constitution', and in

¹ *Vertrauliche Briefe über das vormalige staatsrechtliche Verhältniß des Waadtlandes (Pays de Vaud) zur Stadt Bern* (Frankfurt, 1798); 'Über die Englische Reformbill' (*Allgemeine Preussische Staats-Zeitung*, 1831).

² Pinkard 2000, 245.

³ This turn of phrase occurs frequently in German constitutional histories, for instance, in the title of Brandt 2012.

⁴ The quest for a new 'international' order has now received renewed scrutiny by De Graaf, de Haan and Vick 2019, De Graaf 2020 and Sluga 2021.

1830, the scholar and politician Carl von Rotteck declared his time to be 'the *era of constitutions*'.⁵

While the end of the Holy Roman Empire in 1806 has been suggested as a kind of 'constitutional moment' in the history of nineteenth-century Germany,⁶ a similar case could arguably be made for the fall of Napoleon. Continuities should not be underestimated, from the so-called *Reichspublizistik*,⁷ the French Revolution, of course,⁸ and the time of Napoleonic reforms.⁹ All the same, constitutionalist ambitions were clearly invigorated when the so-called Wars of Liberation came to an end and sovereignty was bestowed upon the members of the German Confederation in 1815.¹⁰ In the literature, this moment has been described as 'the key turning point in modern German constitutional history', with Michael Stolleis, for instance, speaking of the search for a 'constitutional "zero hour"'.¹¹ This is reflected in contemporary discourse, whose 'absolute focus point' it became.¹² As Rudolf Vierhaus puts it, 'the constitutional question moved to the center of German politics' as 'the central and most heavily debated political problem'.¹³ The liberation from Napoleon created a sense of possibility and provided very considerable political momentum. In 1815, the Rhenish publicist Johann Friedrich Benzenberg pointedly declared that 'what moved France in 1789 is now moving Germany'.¹⁴

⁵ Dahlmann 1815, 60; Rotteck 1830, 172.

⁶ Burgdorf 2020. For the concept of the 'constitutional moment', see Ackerman 1991, 1998.

⁷ E.g., Weis 1984, Peters 1993, Burgdorf 1994 and now Schnettger 2020, chapter 10. More broadly, see Whaley 2012. Burgdorf 2015, 2018 detects 'proto-constitutionalism' in the Old Empire and Johann 2021 emphasises 'the empire's constitutional afterlife in Prussia' (2). Müßig 2008 investigates constitutional discussions in the eighteenth century.

⁸ E.g., Vierhaus 2002, 24. Dippel 1991 has collected constitutional drafts from the 1790s. Eschenmayer 1819, 220 provides a contemporary example for the view that the French Revolution planted the seed for constitution: 'A period of 25 years ... has fertilised anew the idea of law in the people's mind, and its fruit is called *constitution*.'

⁹ See, for instance, Fehrenbach 1997 and consider Thomas Nipperdey's contentious statement that 'In the beginning, there was Napoleon' (Nipperdey 1983, 11; 2014, 1). Kirsch and Schiera 1999, 17 employ the term 'Napoleonic constitutionalism' for the period 1799–1814, as does Hecker 2005, who focuses on 1806–1813. Brandt and Grothe 2007, 16 point out that six constitutions were introduced between 1807 and 1811.

¹⁰ For an introduction to the politics of memory surrounding the wars against Napoleon, see Clark 1996 and Planert 2011, 110–11. More extensive treatments are provided by Planert 2007 and Hagemann 2015, 2019.

¹¹ Lee 2008, 619; Stolleis 1992, 76, slightly altered in Stolleis 2001, 41. More recently, the end of the Napoleonic wars has also been seen as 'the origin of the modern international order'; Sluga 2021, 9.

¹² Prutsch 2013, 45. ¹³ Vierhaus 2002, 27, 32. Cf. Grimm 1990, 875.

¹⁴ Benzenberg 1815, 29. The epigraph above is taken from page 17.

The political process initiated by the Congress of Vienna in 1814/15 was accompanied by a tremendous amount of journalistic activity and debate in newspapers, periodicals, pamphlets and books. According to contemporary reports, the word 'constitution' came to be on everybody's lips with the opening of the Congress.¹⁵ The author of an anonymously published book entitled *Regent und Volk, oder: welche Constitution muß der preußische Staat haben?* (*Regent and People, or: which constitution must the Prussian state have?*) mentioned literally 'millions' of minds busied with the constitutional question and tried to explain the ubiquity of the wish for constitution with three reasons.¹⁶ First, the American and French Revolutions had set an example; second, European states had become impoverished in the 'wars of revolution' and rulers' dependence on successful taxation furthered political accommodation; third, popular participation in public affairs was regarded as a fair 'reward' for the popular defence of the fatherland.¹⁷ There is much of relevance in this acute analysis, as (South) German constitutionalism has been explained in the literature as an effort to increase levels of political unity and stabilise monarchical rule. Concessions in terms of representation were intended to enhance monarchical legitimacy and solve financial debt problems.¹⁸

This helps to account for the concession made in Article XIII of the so-called Bundesakte, or Federal Act, adopted at the Congress of Vienna in 1815, which promised that an 'estate-based constitution [*landständische Verfassung*]' would be introduced in all signatory states. Constitutions had already been promised by the rulers of several German states during the so-called Wars of Liberation. With Napoleon finally defeated, the member states of the German Federation formally committed themselves to introduce them, and a host of contemporary commentators urged the German princes to keep true to their promises.¹⁹ Most notoriously, the constitutional promise for Prussia, first expressed in 1810 and confirmed in 1815 and 1820, was not redeemed before the middle of the century. In contrast, the rulers of the Southern German states were the first to honour their commitment and, next to several smaller states, Bavaria, Baden and Württemberg all had constitutions by 1820.

¹⁵ *Ein Wort* 1818, 192. ¹⁶ *Regent und Volk* 1818, VI.

¹⁷ *Regent und Volk* 1818, 9. Cf. Zahn 1818, 1: 'rightful reward'.

¹⁸ See, for instance, Huber 1967, Ullmann 1986, Nolte 1990, Green 2001, Prutsch 2013, consider Wehler's 1987 thesis of 'defensive modernisation' and the notion of 'reform from above', e.g., in Böckenförde 1991, 258 or Hettling 1990.

¹⁹ E.g. [Görres] 1818, 10 and 45; Uhland 1816, 15 (also quoted in Massenbach 1817a, 56).

The parsimonious phrasing of Article XIII left ample room for contrasting interpretations and spurred much debate. Still, it was considered a door-opener by the advocates of constitutionalisation. The Berlin publicist Friedrich Buchholz, for instance, drew a parallel to the time of the Reformation, comparing the Federal Act to Luther's Theses.²⁰ The constitutional question swept public discourse to engender a debate of enormous dimensions and was discussed all over Germany, from the smallest to the largest state and everywhere in between. Countless observers shared the tenor of a prominent newspaper, which found that 'the desire for estate-based constitution has become virtually universal in Germany'.²¹ Even just a cursory look at book titles and the contents of periodicals reveals that the constitutional question was omnipresent. A steep increase in its topicality is confirmed by the Ngram Viewer, which shows a significant upsurge in the occurrence of the term '*Verfassung*' in German-language books in the second decade of the nineteenth century.²² This term, which carries the same bodily connotations as the English equivalent, became the established term, but early nineteenth-century sources still use '*Constitution*' and '*Konstitution*' too.²³

The debate was wide-ranging and, with constitutional thought being more expansive than constitutional practice, showed little respect for state boundaries. Attention was, however, paid to regional particularities. Covering many different but related concerns, a high degree of commonality and exchange exists between a large number of writers, which seems to justify reference to a debate in the singular and with a determinate article. As it were, the constitutional question was *the* question at the time. This study focuses on the German-language debate, but its European dimension cannot be disregarded. While connections in this respect remain relatively little studied,²⁴ the sources definitely justify speaking of 'the European entanglement' or 'the transnational character of the European constitutional discourse' with view to 'the transfer of ideas

²⁰ See [Buchholz] 1819b, 474.

²¹ Neuer Rheinischer Merkur 1818, 1047. Cf., for instance, to [Wangenheim] 1816, 3; [Pölitz?] 1819, 133.

²² For a discussion of the limits as well as the possibilities of this tool offered by Google Books, see Michel et al. 2011 and Armitage 2012, 507. I am only using it for additional confirmation of my findings in the sources here.

²³ For a conceptual history of *Verfassung*, see Grimm 1990, now available in English as Grimm 2016, chapter 1. In addition, see Riedl 2003 for a discussion of literary engagements with political constitution in the years 1789–1815.

²⁴ Kirsch and Schiera 1999, 11–14. Dippel 2005 refers to 'Modern Constitutionalism' as 'a History in Need of Writing'; see now also Payk 2021 and Biagi, Frosini and Mazzone 2020: *Comparative Constitutional History*, vol. 1.

and debates'.²⁵ The mere existence of endeavours such as Gustav Hugo's *Chronological Index of Constitutional Charters*, which lists 180 constitutions from around the world in 1827, reflects contemporary awareness of a broader movement for constitutionalisation.²⁶ Beyond mere scholarly curiosity, such comparisons between the constitutions of various countries clearly had a political motivation. This is conveyed, for instance, by the hardly neutral title of Ignaz Rudhart's *Overview of the Most Excellent Regulations of Popular Representation Contained in the Constitutions of Various States*. The book's motto explicitly incites to acquire foreign merits while maintaining homegrown ones.²⁷

At the same time, some constitutions certainly garnered more attention than others. While I have encountered several exceptions to the rule, scholarship generally discounts the importance of constitutional developments in North America for German discussions at the time.²⁸ Some contemporaries themselves considered it 'natural' that Europeans were more interested in the French than the American Revolution, due to the simple fact of geographical proximity.²⁹ Occasional discussion of, for instance, the Spanish (1812) or Norwegian (1814) constitution occurs, but there is widespread agreement that the French and British, or English, model dominated the German discourse.³⁰ As is well known, the English constitution was widely admired and idealised since at least the publication of Montesquieu's *De l'esprit des loix* in 1748.³¹ While its depiction depended largely on a given author's political standpoint,³² the British example constituted an immensely important point of reference in the constitutional debate after Napoleon. The English constitution,

²⁵ D'Aprile and Harket 2016, 100, 70, 70.

²⁶ Hugo, *Chronologisches Verzeichniß der Verfassungsurkunden älterer und neuerer Zeit* (Heidelberg, 1827).

²⁷ Rudhart, *Uebersicht der vorzüglichsten Bestimmungen verschiedener Staatsverfassungen über Volksvertretung* (Munich, 1818).

²⁸ E.g., Dippel 1992, 13; Prutsch 2009, 49. See also Angermann 1974. For instance, however, the debate about bicameralism analysed in Chapter 5 carries many echoes of earlier American discussions.

²⁹ *Regent und Volk* 1818, 4.

³⁰ See Prutsch 2009/2013. The importance of Franco-German cultural transfer in the period has been established by the seminal studies of Espagne and Werner 1988 and Lüsebrink and Reichardt 1997. The growing literature on Anglo-German cultural transfer includes Maurer 1987, Muhs, Paulmann and Steinmetz 1998, Johns 2014, Ziegler and Carl 2014 and, since 2010, Angermann. *Yearbook for Anglo-German Literary Criticism, Intellectual History and Cultural Transfers*.

³¹ On the reception of Montesquieu in Germany, see for instance Vierhaus 1965, Herdmann 1990, Mohnhaupt 1999. Kraus 1998, 2006 explores German perceptions of the English constitution; see also McClelland 1971.

³² A point commonly observed in the literature, e.g., by Lottes 1995, 151, 154 and Kraus 1998, 122.

or idealisations thereof, had likewise informed the *Charte constitutionnelle* of 1814, which in turn inspired constitutional aspirations across the continent.³³ Both will accordingly re-appear throughout the book. At the same time, the French Revolution remained firmly at the back of all minds as a deterrent and anti-French sentiment was in vogue following the revolutionary and Napoleonic wars. To say that the French Revolution casts its shadow over all subsequent political thought is as banal as it is true for the German constitutional debate under analysis here.

Of course, one must still question how widespread demands for constitutionalisation really were, as contemporaries did too. The famous playwright and publicist August von Kotzebue, for instance, insisted that those desiring constitutions (*Constitutions-Begehrer*) were far and between and considered their demands to be short-lived.³⁴ According to him, it had been ‘barely four years’ since ‘the clamour for constitutions’ had been raised; nobody had thought of them before the ‘Wars of Liberation’ had started, and nobody would have without the princes’ encouragement.³⁵ Kotzebue claims that only a small minority is really invested in constitutionalism while most only want peace and quiet. He doubts that the people even know what ‘constitution’ means and cites the French minister of police Joseph Fouché to the effect that ‘in most cases, it means no more than the wish not to obey’.³⁶ To Kotzebue, the talk of constitution seemed to be no more than a temporary fashion.

While the true extents of the debate are difficult to fathom, the subject of the constitution certainly occupied more than just intellectuals and writers. An interesting piece of evidence in this regard is the so-called *Adresse der Stadt Coblenz und der Landschaft* (*Address of Koblenz*), a document that may be described as a popular petition. Urging the Prussian King to fulfil his constitutional promise, it had been signed by several thousand individuals in the Prussian Rhineland. The teacher and publicist Joseph Görres headed the efforts and led the delegation – ‘an Estates Assembly in miniature’³⁷ – comprising representatives from various estates, such as scholars, nobility, soldiers and farmers, that presented the Address to State Chancellor Karl August von Hardenberg at a public audience in January 1818. Having collected so many signatures for the Address, Görres for one considered it a ‘certified document on the opinion

³³ On the role of the English model in French constitutional debate, see De Dijn 2005a, 2005b, 2008. On the *Charte*’s importance across Europe, see Prutsch 2013, 2018.

³⁴ Kotzebue 1818, 268. ³⁵ Kotzebue 1818, 267.

³⁶ Kotzebue 1818, 268 [*bei der Mehrzahl nichts sagen will, als die Lust nicht gehorchen zu wollen*].

³⁷ [Görres] 1818, 9.

and disposition of the people' that resolved all doubt about the people's pursuit of constitutionalisation.³⁸ Claiming the tacit consent of all who had not signed explicitly, he presented it as 'the unanimous declaration of will [*Willensmeinung*] of two to three hundred thousand people'.³⁹ The Prussian King did not appreciate such agitation; he condemned the collection of signatures and demanded Görres's removal from the Rhineland.⁴⁰ In a public response, which numerous newspapers across the German lands reported, he refused to be moved to action by such popular solicitation.

Hegel, for his part, certainly took note of the Address too: twenty-nine-year-old Friedrich Wilhelm Carové, a native of Koblenz whose doctorate Hegel approved in the summer of 1818, had supposedly signed it; his library held a copy of the pamphlet written by Görres, which recounted the presentation of the Address; and the latter was reviewed in the *Heidelberger Jahrbücher* while Hegel served as their co-editor.⁴¹ Görres's pamphlet conveys a strong sense of historical momentum, declaring the present moment to constitute 'the watershed of two essentially opposite times'. The introduction of a constitution is portrayed as a historical necessity and the Prussian King is urged to embrace the so-called 'spirit of the age' that demands it. Pointedly, Görres proclaims that 'the great world clock has struck'.⁴² His remark that 'what is right and what the development of history commands will happen eventually' sounds oddly reminiscent of Hegel's contested double dictum in the preface to the *Philosophy of Right*.⁴³ In this respect, one may detect a rather marked agreement between Hegel and Görres, whose intellectual relation was oftentimes fraught.⁴⁴

The sense that the time was ripe for constitutionalisation was felt overwhelmingly at the time and communicated in numerous publications. In this context, an investigation of the early nineteenth-century German reception of Machiavelli, whose name is connected to the idea of seizing the moment in politics, may prove rewarding, although this is not the place for it. Suffice it to say that Hegel diagnosed an uncanny parallel between the situation, characterised above all by political fragmentation, in contemporary Central Europe and the Italian peninsula of Machiavelli's

³⁸ [Görres] 1818, 4 [*Volks*]. ³⁹ [Görres] 1818, 11 [*Menschen*]. ⁴⁰ Levinger 1990, 267.

⁴¹ K 1226. It was reviewed anonymously in *Heidelberger Jahrbücher der Litteratur* 11(1), 117–20.

⁴² [Görres] 1818, 45, 43, 48. On the use of the term '*Zeitgeist*' and 'The Politics of Time' involved, see Jung 2014.

⁴³ [Görres] 1818, 43; cf. *PR*, preface, 14 and the Introduction to this volume.

⁴⁴ See, for instance, *GW16*, 476–77 and Jaeschke 2003, 307–10.

day. Disregarding commonplace accusations against the author of *Il Principe*, Hegel certainly shared his concern with the unity of the state and the sense that human ways must be 'suited to the times and circumstances', as we shall see.⁴⁵

The sense of possibility provided by a historical moment is also evident in another item held by Hegel's library, a copy of the speech given by the Göttingen historian Arnold Heeren at the opening of the German Bundestag in 1816.⁴⁶ Already its epigraph, taken from Friedrich Schiller's *Wallenstein*, alludes to certain fateful moments in the life of man. Heeren clearly sees the years immediately following the fall of Napoleon as such a moment in the lives of all European men and states, and especially 'Germany and the German people' on which, he asserts, the future depends.⁴⁷ While he focuses on inter-state relations, in accordance with his title *The German Federation in Relation to the European System of States*, Heeren definitely shares the sense of facing a unique historical moment that must not be wasted.⁴⁸ Another author applied Hamlet's famous line to the constitution and confidently proclaimed that, of course, it had 'to be'.⁴⁹ A song from 1818, which appealed to the constitution as a safe haven, or literally a 'holy port', was tellingly entitled 'Now or never!'.⁵⁰

The impression that conditions had changed and a new period begun is also conveyed memorably in Jean Paul's self-described 'humorous pamphlet' entitled *Mars und Phöbus: Thronwechsel im J. 1814* (*Mars and Phoebus: change of thrones in the year 1814*). Depicting a Germany in agony under Napoleon's yoke, the witty author celebrates this 'new world-pregnant year' as the wonderful dawn of a new era.⁵¹ Metaphorically, the god of sun assumes rule over the earth from the god of war. Another author suggests that the 'great prophetic word' in 2 Corinthians 5:17 is applicable to Europe at present: 'old things are passed away; behold, all

⁴⁵ Machiavelli [1513] 1988, 85. See, for instance, Hegel 1999, 77–81 (*The German Constitution*) and VPR19, 555–56. Robertson 2015 claims 'the Rediscovery of Machiavelli in Napoleon's Germany'.

⁴⁶ K 1234: Heeren, *Der Deutsche Bund in seinen Verhältnissen zu dem Europäischen Staatensystem* (Göttingen, 1816).

⁴⁷ Heeren 1816, 6.

⁴⁸ Similarly, Sluga 2021, 8 argues that 'the political ambitions heaped upon the invention of international order from 1812 are further evidence of a new capacity to imagine the future perched on an aspirational horizon of advancing and receding time', as suggested by Reinhart Koselleck's *Sattelzeit* chronology.

⁴⁹ *Regent und Volk* 1818, cover page. ⁵⁰ Fraustadt 1818, 592, 588.

⁵¹ Jean Paul 1814, 47. Hegel was fond of Jean Paul's literary works, who in turn admired the *Phänomenologie*; see Pinkard 2000, 377–81 on their meeting in 1817. He seems however unaware of the previous personal acquaintance of the two as attested by Jean Paul's letters from Nuremberg in June 1812 (Paul 1952, 270ff.).

things are become new'.⁵² This clearly conveys a sense of urgency and the dramatic expectations involved. The translator of Benjamin Constant's *Réflexions sur les constitutions, la distribution des pouvoirs et les garanties dans une monarchie constitutionnelle* (*Reflections on constitutions, the separation of powers and guarantees in a constitutional monarchy*) introduced them with the observation that Germans have a 'practical interest' in these matters now that they have been liberated.⁵³ This points us towards the question what kind of change people expected to take place.

When Benzenberg declared in 1815 that 'what moved France in 1789 is now moving Germany', he certainly did not mean the abolition of monarchy, as indeed nobody had yet meant in 1789.⁵⁴ It was found wrong to think that 'the attachment to the monarchical form of government' had been extinguished by 'the spirit of the age', as the Hanoverian councillor Ernst Brandes had surmised in 1808.⁵⁵ Except with regard to the free cities, which maintained more or less republican forms of government,⁵⁶ the assumption of monarchy formed the basis for virtually the entire constitutional discourse in post-Napoleonic Germany. Various writers claimed that agreement on the excellence of hereditary kingship existed among all sensible Germans,⁵⁷ or indeed all thinking Europeans.⁵⁸ They invoked the experience of the French Revolution as well as admirable English steadfastness in the face of the Napoleonic threat and were convinced that nobody in the least familiar with 'anti-monarchies' could wish for them.⁵⁹ On the evidence of a multitude of sources, this seems to be a representative account of how things were, rather than pure polemic. Existing scholarship confirms that, with only rare exceptions, the entire debate operated on the premise of the desirability of constitutional, or limited, monarchy.⁶⁰

With monarchy taken virtually for granted, the central issue of the debate concerned the question of popular representation.⁶¹ What people

⁵² [Pölitz?] 1819, 134. Cited according to the King James Version here. ⁵³ Stolz 1814, II.

⁵⁴ Benzenberg 1815, 29. Cf. *ibid.*, 316. E.g. Fontana 2016, 7 describes 'the revolutionary project' as 'the establishment in France of a constitutional monarchy modeled on the English example of 1688'.

⁵⁵ [Welcker] 1815, 230; Brandes 1808, 198. ⁵⁶ See Heeren 1816, 22–23.

⁵⁷ Ludwig Wieland 1816, 437. The renowned writer's son had also published a booklet *Ueber die Vorzüge der gesetzlichen Monarchie gegen jede andere Regierungsform* (*On the virtues of lawful monarchy in contrast to all other forms of government*) in 1815.

⁵⁸ *Regent und Volk* 1818, 7–8. ⁵⁹ *Antwort* 1817, 263.

⁶⁰ See, for instance, Stolleis 1992, 100; Vierhaus 2002, 24. Yet the editor of the German translation of Mary Wollstonecraft's *Vindication of the Rights of Woman* for one anxiously observed a contemporary bias against heredity in monarchy; Salzmann 1793, XIII.

⁶¹ This is, for example, confirmed by Stolleis 1992, 109.

expected from the introduction of constitutions was a guarantee for their rights and, above all, popular participation in government, which some considered a God-given right in itself.⁶² On the widespread notion that a people had to be sufficiently advanced in its development in order to be successfully involved in the affairs of government, many agreed that the time had come. Especially the popular effort in the wars against Napoleon was adduced as testimony to the people's maturity. Having thrown off their oppressor, so the argument went, 'the peoples of Germany' had proven themselves ready for a constitution premised upon 'independence from tutelage', and 'blind obedience' was to be replaced by 'respect for the law'. Yearning for lawful government, the people demanded 'all the rights of the citizen, who, as member of the state, also has a voice in the people's affairs'.⁶³

Despite far-reaching agreement on the need to introduce constitutions that guaranteed some form of popular representation, however, their particulars were hotly disputed. Vivid contestation of the meaning of the 'estate-based constitution' granted in the Federal Act shows that the interpretation of the central terms of debate depended heavily on any given author's own political standpoint. Tellingly, not even the ministers of the German states could agree on the interpretation of the Federal Act's thirteenth article, as the (initially secret) protocols of the 1819 Karlsbad Conference attest.⁶⁴ The explicit attempt of the Austrian foreign minister Clemens von Metternich and his aide Friedrich Gentz to fix its meaning – in direct opposition to '*purely representative* constitutions' of supposedly foreign and revolutionary origin that contradicted the Confederation's monarchical nature – foundered.⁶⁵ Diversity of opinions prevailed and no such definition entered the ministers' proposition to the Bundestag, although it faulted the 'universal confusion of political language', condemned 'democratic principles and forms' and exhorted the delegates to work out a coherent position on this important question.⁶⁶ This episode underscores the fact that constitutional terminology was by no means fixed and the sources reflect a genuine struggle for the prerogative of interpretation, which has hardly been explored in detail (apart from Hartwig Brandt's 1968 *Landständische Repräsentation im Vormärz*, which provides

⁶² E.g., Paulus 1814a, 611.

⁶³ Eschenmayer 1819, 218, 218, 219, 219, 218.

⁶⁴ These are contained in Klüber 1844. Klüber's footnote on p. 124 points to all documents pertinent to this issue.

⁶⁵ Klüber 1844, 124 (protocol of the seventh session on 13 August 1819). For Gentz's essay in full, see p. 220ff.

⁶⁶ *Protokolle* 1819, 269.

an interpretation organised completely along ideological labels and a five-page interpretation of Hegel with which I strongly disagree).⁶⁷

As the ubiquitous trope of the peoples' urge for constitution was virtually tantamount to the demand for the introduction of some form of popular representation, the political vocabulary of the 'estate-based constitution' – further distinguished into *landständisch* and *ständisch* in German – was indeed amplified by the notion of a 'representative constitution', which abounds in the sources explored in this book. Once more, the Ngram Viewer provides a sense of the prominence that all of these terms acquired in the years under investigation here, with virtually no indication of their use before 1810 and a staggering increase in their currency by 1820. The long-term curve marks all three compounds as distinctly nineteenth-century terms. To be sure, they all relied on the notion of some kind of 'popular' share in government and were exactly *not* clearly delineated, yet the adjective 'representative' especially emphasised the demand to involve more than merely a few powerful individuals or the traditional Estates. The Leipzig professor Wilhelm Traugott Krug, for instance, appealed to the 'undeniable and urgent need' for representative constitutions in his 1816 book, tellingly entitled *Das Repräsentativsystem (The Representative System)*.⁶⁸ In practice, that meant the establishment of a deliberative assembly, yet views on how it should be composed, what should be its competences and the like were widely diverging. As we shall see, Hegel offered a distinctive answer.

Hegel and the Constitutional Debate

Hegel clearly did not remain unaffected by the constitutional debate raging about him. In 1814, when the discussion was in some sense just starting, Hegel's friend and repeated colleague, the rationalist theologian Heinrich Eberhard Gottlob Paulus penned a review of no less than twenty-three of what he considered to be the most important pamphlets on the constitutional question.⁶⁹ Commenting on the piece with an eye to Vienna, Hegel refers to the flood of pamphlets as a 'paper pre-congress' in his

⁶⁷ Boldt 1975 and Stolleis 1992, 2001, 2014 restrict analysis to the history of scholarship, esp. the discipline of public law. Stollberg-Rilinger 1999 analyses eighteenth-century interpretations of *landständische Repräsentation*. See Hofmann 1974, on the long term, and Neu 2010, for a recent introduction to research on political representation in early modern Germany.

⁶⁸ Krug 1816, 32.

⁶⁹ Paulus 1814a. In a letter from 8 August 1816, Hegel even addresses Paulus as his 'mentor' (BII, 107).

correspondence.⁷⁰ In a letter from early 1814, he tells another good friend, Immanuel Niethammer, of a dream in which a ludicrous personification of the people, called *Pippel*, demands respect for the rights of man and a constitution. *Pippel's* passions are instrumentalised by ruthless but crafty aristocrats, and he ends up as nothing but a fool played off by powerful interest-holders.⁷¹ A year later, one of Hegel's correspondents urged him to write 'a treatise on the state, and on state constitution and state administration to begin with', implying that that was what the *Zeitgeist* was interested in.⁷²

In the lectures of 1817/18, Hegel notes that Estates have 'lately' been 'vigorously' demanded.⁷³ While agreeing with this demand in principle, as we will see, he was clearly less than content with the development of the debate. In the margins of his 1817 *Encyclopedia*, he morosely notes that 'on constitution, like philosophy, everybody thinks they must have a say'.⁷⁴ With an article on the constitutional conflict in Württemberg, the lectures from 1817 onwards and the *Philosophy of Right*, Hegel entered the discussion himself. Time and again, he explicitly refers to the constitutional debate in his book from 1820, returning the following verdict in §272A:

In recent times, an endless amount of empty talk about the constitution, as about reason itself, has come into the world It is no wonder if this empty talk has had the consequence that reasonable men have become sick of the words reason, enlightenment, right etc., as of constitution and freedom, and one might be ashamed to enter into further discussion of political constitution.

Editors of the *Philosophy of Right* have insisted that this passage refers specifically to Hegel's professional rival Jakob Friedrich Fries.⁷⁵ While Hegel's reference to 'religion and piety' in the same passage provides justification for this suggestion (cf. §270A), it is far too narrow. Adding the Romantics and Carl Ludwig von Haller does not capture the breadth of Hegel's reference either.⁷⁶ Hegel certainly did combat the views of both Fries, Haller and several authors commonly described as Romantics (especially Friedrich Schlegel),⁷⁷ yet their works formed part of a much larger

⁷⁰ *BII*, 42: Hegel to Paulus, 9 October 1814.

⁷¹ *BII*, 18: Hegel to Niethammer, 6 January 1814.

⁷² *BII*, 55: Thaden to Hegel, 27 August 1815.

⁷³ *VPR*17, 201.

⁷⁴ *E*, 477. Cf. *PR*, preface, 9.

⁷⁵ Wood in Hegel 1991, 461: 'This is evidently another reference to Fries.' For a starter on the fraught relation between Fries and Hegel, see Pinkard 2000, 221ff.

⁷⁶ Knox in Hegel 2008, 356: 'it is no doubt Fries and the Romantics whom Hegel has in mind, as well as von Haller'.

⁷⁷ On *Hegels Kritik der Romantik*, see Pöggeler [1956] 1999. Beiser 2005 provides further references.

literature and public debate on the subject of the constitution.⁷⁸ Based on the evidence presented above, we must conclude with a contemporary observer that ‘an innumerable host of periodicals has been occupied to debate this matter in detail’.⁷⁹

Other commentators shared Hegel’s lament that everybody thought they should have a say on the matter of the constitution.⁸⁰ In fact, even Fries echoes Hegel’s judgement in a letter from 6 January 1821, where he shows himself unwilling to pen a rebuttal to Hegel’s notorious attack on him in the preface of the *Philosophy of Right*, not least because ‘in these times of political *Katzenjammer* . . . one must be sick of publicly talking about political matters’.⁸¹ Hegel himself substantiates the existence of a multiplicity of ‘circulating ideas’ (§272A), when he writes the following in §301A:

so unspeakably many lopsided and wrong ideas and figures of speech about the people, constitution and estates have come into the circulation of opinion that it would be a vain effort to want to list [*aufführen*], discuss and correct them.

Notwithstanding his alleged disdain for much of the constitutional debate, however, Hegel clearly enters that very ‘discussion of political constitution’ (§272A). In his view, the ‘history and struggle of recent times’ had demonstrated that a rational, philosophical approach to the constitutional question was needed, and that is of course exactly what he wants to provide.⁸²

The young Hegel, known to family and friends as Wilhelm, had greeted the French Revolution enthusiastically and clearly diagnosed the need for change in the organisation of European states as the eighteenth century drew to a close. With regard to Württemberg, he registered the widespread ‘feeling that the public building, as it is, is unsustainable’.⁸³ As to the Holy Roman Empire, he declared bluntly that ‘Germany is no longer a state’.⁸⁴ Invoking Voltaire, he repeatedly credits the Old Empire with constituting nothing less than ‘*anarchy*’⁸⁵ and calls it an ‘empty name’, ‘nonsense’ and an ‘absurdity’.⁸⁶ Having initially hoped for the Empire’s revitalisation,

⁷⁸ Especially Fries 1816, *Vom deutschen Bund und deutscher Staatsverfassung* (*Of the German Federation and German State Constitution*) and Haller 1816–18, *Restauration der Staatswissenschaft* (*Restoration of the Science of State*, vols. I–III).

⁷⁹ Eschenmayer 1819, VI. ⁸⁰ Such as Müller 1816, 8; and Boisserée 1978, 401.

⁸¹ BZ, 221 (letter to L. Rödigier). ⁸² E, 497. ⁸³ GW2, 103. ⁸⁴ GW5, 161.

⁸⁵ LW, 31. Cf. GW5, 6, 52, 64, 161; VPR17, 168; VPG, 518. Cf. Voltaire 1803, 135 (in Hegel’s library: K 1274); Voltaire 1792b, 233.

⁸⁶ LW, 31. Cf. VPG, 539: ‘The lie of an empire’ and Voltaire 1792a, 15; Voltaire 1792b, 567.

Hegel shifted his attention to the newly constituted states after its collapse in 1806.⁸⁷ As Napoleon approached Jena, where Hegel lived and the French would decisively beat the Prussian army, Hegel found it 'not difficult to see that our time is a time of birth and transition to a new period'.⁸⁸ At that time, he pinned his hopes on Napoleon as 'the great teacher of constitutional law' who would 'have to organise' the realisation of 'a free monarchy'.⁸⁹

By 1815, it was clear that the Germans would have to meet the challenge themselves and Hegel clearly shared the sense of having reached a historical moment. As he first made clear in his *Assessment* of Württemberg's constitutional developments, nothing less was at stake than the establishment of a modern state. With the collapse of the Holy Roman Empire and the fall of Napoleon, the German states had won their external sovereignty and could subsequently be constituted internally according to the demands of reason. While Hegel appears rather cynical about the so-called Wars of Liberation and the Congress of Vienna in his correspondence, he did not fail to publicly acknowledge that German youth had bled for free constitutions.⁹⁰ After all, several of his own students had fought in the wars against Napoleon, such as Leopold von Henning, who acted as Hegel's teaching assistant in Berlin, translated Thomas Jefferson's *Manual of Parliamentary Practice* and referred to representative constitution as the 'demand of the spirit of the age' in 1819.⁹¹ Yet constitutionalisation for Hegel is not just a matter of the princes' keeping true to their promises made during the 'Wars of Liberation', as contemporary commentators urged. Rather, its 'necessity . . . lies in the nature of the concepts that have become common conviction, which attach to a monarchy the provision of a representative constitution, the rule of law and popular participation in legislation'.⁹² The reorganisation of states after Napoleon offered the opportunity to establish a rational constitution conducive to the realisation of human freedom and to introduce the kind of representative institutions every modern state needed.

In 1817, Hegel declared that Article XIII of the Federal Act 'reasonably stipulated estate-based constitutions in general, not the old ones, for the new German states' and openly advocated 'the introduction of a representative constitution' in Württemberg.⁹³ Denying the possibility to reinstate

⁸⁷ See, e.g., Pöggeler 1977. ⁸⁸ *GW*9, 14; preface to the *Phenomenology*.

⁸⁹ *BI*, 185; Hegel to Niethammer, 29 August 1807. ⁹⁰ *LW*, 41.

⁹¹ Jefferson 1819, preface (unpaginated). Hegel's library contained a copy: *K* 1160.

⁹² *LW*, 33; 'rule of law' renders 'eines gesetzmäßigen Zustandes'. ⁹³ *LW*, 113, 30.

‘the so-called old constitutions’, he clearly rejected the old system of representation according to Estates.⁹⁴ At the same time, Hegel concluded from the French experiment with representation that ‘democratic abstractions’ were just as much opposed to rational state law as outdated positive rights.⁹⁵ His lectures and the *Philosophy of Right* accordingly developed the characteristics of a model of representation that would allow to escape the evils of both feudalism and abstraction.

Hegel thus embraced the single greatest political demand of his age, captured in the notion of the ‘representative constitution’. On the one hand, he was wary of seeing popular representation as a panacea; its institutionalisation was not the only or even supreme ‘guarantee of the public welfare and rational freedom’ (§301A). Instead, it was part of a larger whole, the constitution that constituted ‘a hieroglyph of reason’.⁹⁶ But already in his piece on *The German Constitution*, written around the turn of the century, Hegel had claimed world-historical significance for the system of representation as the defining characteristic of the modern state.⁹⁷ Ever since his intervention in Württemberg’s constitutional conflict, he regarded an Assembly of Estates as an integral part of a monarchical state and, indeed, ‘the rational constitution’ (§286A). Hegel thus started to theorise popular participation in his lectures and the *Philosophy of Right*.⁹⁸ While he argued on the basis of rationality, ‘the Concept’ and ‘the Idea’, others who started from empiricism reached similar conclusions. As we shall see throughout this book, Hegel addressed virtually all of the features of a representative constitution as discussed in countless contemporary books, pamphlets, periodicals and newspapers all over Europe. What makes his contribution to the debate special – apart from its endurance – is precisely the philosopher’s point of view he claims.⁹⁹ What he did was to invest the representative constitution with a philosophical justification.

Provincialising Prussia

Hegel certainly has gone down in history primarily as a ‘Prussian’ philosopher, even among those who reject the tenacious stereotype of the ‘Prussian state philosopher’. While this much-repeated commonplace is

⁹⁴ LW, 33. ⁹⁵ LW, 37. ⁹⁶ VPR24, 1429 – PR §279Z. Cf. PR, preface, 10.

⁹⁷ GW5, 111; Hegel 1999, 63.

⁹⁸ See also the several editions of the *Encyclopedia*, e.g. §544 in the 1827 edition. In the 1817 edition, Hegel had already mentioned the need to regulate ‘participation’ (E §441).

⁹⁹ On Hegel’s critique of empirical (and formal) approaches to politics, see Plant 1973, 89ff.

hardly sustainable in the face of historical evidence, numerous commentators have emphasised resemblances between the *Philosophy of Right* and contemporary plans for reform in Prussia.¹⁰⁰ These observations are pertinent, although the question as to how Hegel may have familiarised himself with the draft reports of ministers Hardenberg, Humboldt and Stein, being internal government documents, have routinely been neglected. The relevance of the Prussian context to an understanding of Hegel's political thought is undeniable. After all, his years as professor at the University of Berlin proved to be his most influential, and it is there and then that the *Philosophy of Right* appeared. Yet, to take Prussia as the definitive point of reference is insufficient, for it limits and restricts our understanding. Hegel wrote for a German-speaking audience, but far beyond the confines of Prussia, and we need to take into account a wider range of circumstances and a broader debate.

When the *Philosophy of Right* appeared in 1820, the question of a constitution for Prussia did loom large but, as seen above, the constitutional debate was far from restricted to Prussia, and ideas do not respect borders, especially where books circulate freely. It seems to me unconvincing that a thinker of Hegel's range should not have looked beyond the boundaries of one state, however large and powerful, and there is much evidence to the contrary. In this respect, the focus on Prussia constitutes a historiographical mistake with distorting effects. The emphasis placed on Prussia tends to obscure the fact that Hegel spent only the last thirteen years of his life in Berlin. Before that, he had moved frequently, which exposed him to various political systems and jurisdictions, from Bern and Frankfurt to Saxe-Weimar, Bavaria and Baden. Originating from Stuttgart, Hegel had spent the first twenty-three years of his life in Württemberg. With his wife Marie coming from Nuremberg, his whole family had deep roots in the South of the former Holy Roman Empire, where Hegel also spent the decade preceding his call to Berlin in 1818. It seems only natural that developments there should have commanded his attention at least as much as those in Prussia, or for that matter France and Britain.

In part, the primary focus on Prussia in Hegel studies may also owe to the fact that the history of Prussia has traditionally commanded overwhelming attention by historians of Germany.¹⁰¹ More recently, however, the 'Borussian' legacy has come under attack, and historiography of the

¹⁰⁰ Rosenzweig [1920] 2010, 431ff.; Lübke-Wolff 1981; Grawert 1986; Wood 1990, 13 and passim; Wood 1991, x and passim; Pinkard 2000, 457; Houlgate 2008; Lee 2008.

¹⁰¹ See, for instance, Berger's 2001 historiographical essay or the introduction to Clark 2006.

small and middling states of the 'Third Germany' (in distinction to Prussia and Austria) has grown considerably.¹⁰² Importantly, early nineteenth-century constitutional developments set the Southern German states apart from fellow middling states like Saxony or Hanover as well as Austria and Prussia. While Prussia remained without a constitution until the middle of the century, Bavaria, Baden and Württemberg all had constitutions by 1820. This 'created a completely new institutional context for political participation in Germany'¹⁰³ and renders Hegel's involvement with the Southern German states, described as 'constitutional Germany' by contemporaries,¹⁰⁴ particularly relevant to an investigation of his political thought. The case of Württemberg is especially significant due to Hegel's direct intervention in the constitutional conflict that took place there in the years following the fall of Napoleon.¹⁰⁵

The Significance of Württemberg

In 1817, Kant's successor as professor of philosophy in Königsberg, Wilhelm Traugott Krug, declared that all eyes were turned on Württemberg.¹⁰⁶ As a British commentator explained, this Southern German state 'weighs lightly in the balance of power; but its history is singularly interesting'.¹⁰⁷ For its allegiance to France after 1800, Württemberg had been rewarded with additional territory, effectively doubling in both size and population, and promoted from Duchy to Kingdom in 1806. Due to its timely change of sides during the so-called Wars of Liberation, however, Württemberg escaped punishment at the Congress of Vienna and thus emerged from the Napoleonic era as a 'winner'.¹⁰⁸ As a member of the German Confederation, Württemberg under its now sovereign ruler King Friedrich agreed to the Federal Act of 1815, which in its thirteenth article – however ambiguously – stipulated that 'an estate-based constitution will take place' in each member state. While the Federal Act was adopted and signed in early June 1815, Friedrich had, in an effort to stabilise his rule, presented the Württemberg Estates with a constitutional draft in mid-March already.

¹⁰² As demonstrated by studies like Berding and Ullmann 1981; Nolte 1990; Green 2001; and Ashton 2017. See Green 2003 for further references and reflection on 'The Federal Alternative? A New View of Modern German History'.

¹⁰³ Clark 1997, 47. ¹⁰⁴ Fehrenbach 1997, 134.

¹⁰⁵ For a detailed discussion of 'Hegel's Intervention in Württemberg's Constitutional Conflict', see Buchetmann 2020a.

¹⁰⁶ Krug 1834, 341. ¹⁰⁷ [Smith?] 1818, 338. ¹⁰⁸ Green 2001, 37.

Despite its final success, the introduction of a new Württemberg constitution proved to be a protracted and turbulent process, and contemporaries soon started to use the term 'constitutional conflict' to describe it.¹⁰⁹ The Estates, which had a long and strong tradition in Württemberg, pitted themselves against the king and rejected his imposition of a new constitution.¹¹⁰ When Friedrich died, his more reform-minded son Wilhelm carried on the project but equally met with resistance. The Estates demanded a return to 'the good old law' that had prevailed in Württemberg for the three centuries preceding Napoleon, from the so-called Contract of Tübingen in 1514, until entry into the Confederation of the Rhine.¹¹¹ It was only in the autumn of 1819 that the King and the Estates reached a compromise.

Württemberg's constitutional conflict did not fail to attract Hegel's attention, who had a long-standing interest in the political affairs of the German lands and especially his home state. This is evidenced not only by pertinent entries in the auction catalogue of his library but especially by several fragments concerned with the state of Württemberg from 1798. While employed as professor at the University of Heidelberg in Baden, Hegel anonymously published an article on the 'Proceedings of the Estates Assembly of the Kingdom of Württemberg in 1815 and 1816' ('Verhandlungen in der Versammlung der Landstände des Königreichs Württemberg, im Jahr 1815 und 1816').¹¹² Styled as a review of thirty-three volumes of records, it was more than a hundred pages long and appeared in two instalments in the *Heidelbergische Jahrbücher der Litteratur* from November 1817 to January 1818. When it was separately republished in the summer of 1818, the prefix 'Assessment' (*Beurtheilung*) was added to the title, and that is how Hegel's article will be denoted throughout this book.¹¹³ Referred to as a 'very unspeculative diatribe on the side' by its author,¹¹⁴ the *Assessment* offers an accessible commentary on contemporary political affairs combined with an intelligible exposition

¹⁰⁹ E.g., List [1817] 1933, 'Der Kampf um die württembergische Verfassung' and Fetzer 1818, *Der Verfassungskampf in Württemberg vom Jahr 1815–1817*. For a concise overview of developments, see the introductory chapter in Brandt 1987. For an extended analysis of the constitutional debate in Württemberg, see Eckert 2016, 311–457.

¹¹⁰ On the historical dualism between Württemberg's ruler and Estates in the absence of a nobility, see Vann 1984; Dickey 1987, chapter 3; Wilson 1995.

¹¹¹ The term was popularised during the constitutional conflict, not least by Ludwig Uhland's 'patriotic poems', one of which is explicitly called 'Das alte gute Recht' (Uhland 1816). Fellow poet Justinus Kerner directly replied with biting satire in *Der rasende Sandler/Die gute Stadt Ludwigsburg an das gute alte Recht* (1817).

¹¹² [Hegel] 1817. ¹¹³ [Hegel] 1818. ¹¹⁴ *BII*, 176: Hegel to Niethammer, 31 January 1818.

of some of Hegel's core ideas on political representation and state constitution.

From this polemical article, Hegel emerges as an advocate of the new constitution proposed by the King and a harsh critic of the Estates, who wanted to return to the status quo ante Napoleon. Serving as a defence of constitutional monarchy, the *Assessment* contains many elements that reappear in more elaborate form in his lectures from 1817/18 onwards and in the *Philosophy of Right*. After his anonymous translation of Jean-Jacques Cart's *Lettres* on the Vaud in 1798, the *Assessment* constitutes Hegel's first published statement on the constitutional question, particularly in the post-Napoleonic context. As such, the *Assessment* is a crucial document, especially considering its public nature. It certainly deserves more attention than it has hitherto received and provides a far more important context for the *Philosophy of Right* than has been recognised. The case of Württemberg also carries special significance because, as Hegel put it in 1817, King Friedrich was 'the first and so far . . . almost the only one . . . to give his country such an open and liberal constitution'.¹¹⁵

At the time, Württemberg's constitutional experiment was considered pioneering for all of Germany. Observers everywhere followed it with curiosity and concern, not least the governments of other German states. Contemporaries saw the constitutional question not so much confined to each particular state of the late Holy Roman Empire but rather as transcending their borders. Accordingly, they possessed an acute awareness for the significance of constitutional developments in Württemberg as setting an influential precedent. This sense emerges very clearly, to cite but one example, from Christian von Massenbach's *An Alle Teutsche Männer* (*To All German Men*), where he appeals to the King and Privy Council thus: 'the fate of Germany and Europe, the happiness or misery of many millions, lies in your hands'.¹¹⁶ Yet expectations regarding the outcome of the negotiations were often far from optimistic. For instance, the Romantic August Wilhelm Schlegel thought that 'the Germans are not yet ready for, or capable of having, an estate-based constitution'.¹¹⁷ Especially Clemens von Metternich, the Austrian foreign minister and

¹¹⁵ LW, 49. ¹¹⁶ Massenbach 1817b, 37.

¹¹⁷ As recorded by Sulpiz Boisserée 1978, 403 in his diary entry from 7 June 1817. According to the editor, Friedrich Schlegel is recorded here, yet it seems more likely that his brother August is meant, who married Sophie Paulus (the theologian's daughter) in Heidelberg in 1818, as Hegel reports in *BII*, 194.

alleged puppet master of the German Confederation, placed his hopes on the failure of the Württemberg negotiations.¹¹⁸

While the Estates wanted to see the old constitution, hailed as the birthright of every Württemberger, reinstalled, Hegel scorned their fight for a return to an idealised form of the past as idolatry before ‘*the shrine of the old constitution*’. In his view, the old constitution had become entirely obsolete and represented nothing but a ‘*mouldy concept of constitution*’.¹¹⁹ The French Revolution had shown that states must henceforth be grounded in rational principles. Yet the Estates ‘seem to have *slept through* these last 25 years, probably the richest, which our world history has had, and the most instructive for us because our world and our notions belong to them’.¹²⁰ Declaring that the Estates ‘*have forgotten nothing and learnt nothing*’, as was said about the French royalists, Hegel presents a dramatic interpretation of the constitutional conflict: the positions that clashed during the French Revolution are completely inverted in Württemberg. The King advocates a constitution according to ‘rational state law’ while the Estates act as ‘defenders of the positive and privileges’.¹²¹

Hegel rejects the Estates’ plea for a return to the past as neither possible nor desirable. He disagrees with their claims about the quality of the old Württemberg constitution, which in his view served only to further the interests of the privileged orders of society. Invoking scripture, Hegel warns his fellow Württembergers: “My people, your leaders are deceiving you!” – when they speak of the good old law.¹²² Instead of representing the people, as they claimed, the Estates have looked only after their own profit, evincing ‘a spirit of getting bogged down in private interest and indifference’. Especially where financial matters are concerned, the old Württemberg Estates have rendered themselves guilty of abuse, lining their own pockets without attending to their duties. (Through ‘scavenging and squandering’, they were alleged to have misappropriated four million guilders of state assets in merely twenty-six years.)¹²³ Effectively, Hegel paints a picture of utter corruption prevailing under the old constitution. The latter is evidently useless if it could not prevent so much ‘misuse and

¹¹⁸ See, for instance, Brandt 1987, 31; Sheehan 1989, 417–18; or Simms 1998, *passim*.

¹¹⁹ *LW*, 97, 78. If the ‘r’ was left out of the German ‘*Moderbegriff*’, the expression would read ‘fashionable concept of constitution’. This is of course exactly what it had become among the people of Württemberg, through conscious efforts on the part of the Estates, as exemplified by Uhland’s poems (see n. 111 above).

¹²⁰ *LW*, 61–62. ¹²¹ *LW*, 61. The adage is traditionally attributed to Talleyrand.

¹²² *LW*, 107. Cf. Isaiah 3, 12.

¹²³ *LW*, 58. Based on a report from 1799, this number was criticised as outdated and incorrect by the critics reviewing Hegel’s *Assessment* in 1818 (see below).

illegal activities'. Indeed, most people saw the old constitution not as exercising 'magical power' as claimed by the Estates but as 'a kind of pestilence, the *worst scourge*'.¹²⁴

The argument invoking historical rights, which lay at the heart of the Estates' cause, is invalid to Hegel, who mentions human sacrifice, slavery and feudal despotism as instances of what used to be right at some point, too. Still, nobody in their right mind would want to return to such a state of affairs. As Hegel put it in his lectures on *Natural Law and Science of State*, given while the *Assessment* appeared in print in the winter of 1817/18, 'because something is positive and old law, it is not in and of itself right. Through a change in circumstances, the right which emanates from them ends of itself'.¹²⁵ Already in his first drafts on Württemberg's constitution from 1798, Hegel had argued that institutions and laws that do not accord with a people's customs and needs must perish. Clearly, the Estates' clinging to the past is irrational to Hegel, who drily remarks that 'what is dead cannot come to life again'.¹²⁶ The situation before and after Napoleon simply does not lend itself to comparison as the circumstances have changed fundamentally. What Württemberg required after 1815, according to Hegel, was the establishment of a constitutional monarchy as the only form of state suited to the requirements of the modern world. The task of 'completing a German monarchy . . . through the introduction of a representative constitution' presented nothing less than a historical necessity.¹²⁷

At the time, the *Assessment* was soon described as 'famous', but reactions were mixed.¹²⁸ Two critics penned elaborate reviews and while the author of the so-called 'Remarks of an Expert' remains unknown, the name of Jakob Christian Zahn confers some import upon his criticism. As partner of Johann Friedrich Cotta's famous publishing house, Zahn had founded the *Allgemeine Zeitung*, one of the most important political dailies at the time. His 'Frank Rebuttal' appeared anonymously, yet his authorship – just like Hegel's – would soon have become known. A member of the Assembly since 1815, and its vice-president from 1820 to 1824, he considered his 'anti-critique' an act of 'self-defence'. The main question

¹²⁴ LW, 48, 58, 74. Hegel's damning criticism of the notary system decisively informed his perception of the old constitution. For an interpretation sympathetic to the scribes, see McNeely 2004.

¹²⁵ VPR17, 11. In a speech held as headmaster of the Nuremberg Gymnasium on 30 August 1815, Hegel had told his listeners the same thing; see GW10,1, 505.

¹²⁶ LW, 54. ¹²⁷ LW, 30. Cf. Pöggeler 1983a, 70.

¹²⁸ BII, 281: Thaden to Hegel, 8 August 1821. Even harsh critics subscribed to this characterisation, e.g., Börne 1819.

put before the audience is 'whether the author [i.e., Hegel] belongs to the enemies or friends of the good cause, i.e. a rational and constitutional freedom'.¹²⁹ The answer provided by Hegel's critics is resoundingly negative.

Both reviewers accuse Hegel of blatant partiality against the Estates and the people of Württemberg. A picture emerges of Hegel as a ruthless royalist with no concern for the people's well-being at all. To him, allegedly, 'the state [is] everything, – the people a mere mob'. Hegel's critics portray him as an enemy of representation who wants to 'introduce Estates only to throw sand into the people's eyes'.¹³⁰ On his design, they say, popular participation is pure make-believe and the Estates only meant to sanction the government's will without questioning it. 'What he really wants' is 'no representation' or mere 'sham-representation'.¹³¹ According to the critics, Hegel's ideas serve to institutionalise injustice and legitimise absolutist rule. Driven by 'passionate hatred towards the Old-Württembergers and their constitution', he wants 'to disgrace the Württemberg Estates ... in the eyes of all of Germany'. His indictment is nothing but 'pure slander'.¹³²

Eventually, the anonymous reviewer detects at least some commonality with Hegel who cannot be accused of writing 'for his own profit' but shares a genuine concern for the fate of their homeland.¹³³ Zahn, on the other hand, ends his polemic on a regretful note. Invoking a common Hegel myth, he refers to certain 'young philosophers' who had celebrated the news of Louis XVI's death: alas, 'they have grown old and become outdated in the meantime'.¹³⁴ To contemporaries like Zahn, Hegel seemed to have jumped ship. Hegel for his part was well aware that reactions to his article would by no means only be positive, but he stood by his *Assessment* and referred to the royal efforts at constitutionalisation as 'a good, indeed the noblest cause', which had been 'turned into a bad one by unreason'. He was afraid that his 'dear fellow countrymen', the 'philistines' of the Estates, had harmed the 'good cause in Germany'.¹³⁵ With reference to an expression ironically used to describe a foolish and clumsy act, Hegel calls the affair the worst *Schwabenstreich* there ever was.

In passing, the anonymous reviewer remarks that public opinion has 'judged differently' from Hegel and validated the Estates' resistance to the

¹²⁹ [Zahn] 1818, II, 10, 4–5. ¹³⁰ *Bemerkungen* 1818, 9, 5. ¹³¹ [Zahn] 1818, 28, 29.

¹³² *Bemerkungen* 1818, 41; [Zahn] 1818, 10, 7. ¹³³ *Bemerkungen* 1818, 44.

¹³⁴ [Zahn] 1818, 73. ¹³⁵ *BII*, 175–76: Hegel to Niehammer, 31 January 1818.

King.¹³⁶ On the other hand, Zahn's mention of 'the endless invectives with which the Estates are persecuted' and repeated allusions to other unfavourable commentaries on Württemberg's constitutional affairs indicate that Hegel was not alone in his criticism.¹³⁷ With so many different voices, usually privileged and highly assertive, claiming to speak in the name of the people, it is difficult to ascertain popular views of the constitutional conflict. Contemporary observers oscillate between lamenting that everybody wants to have a say and suggesting that the common people did not care much for politics around the year without a summer. The editor of Cotta's influential *Morgenblatt für gebildete Stände* Therese Huber, for instance, asserts in a letter from July 1817 that 'the people want bread a[nd] wine, nothing else'. Yet the impression of popular apathy is invalidated by her earlier reports of growing dissatisfaction and riots at the end of May.¹³⁸ The reportedly high volume of popular petitions reaching the Estates Assembly and the King seems to corroborate the impression of popular engagement.¹³⁹ At least initially, many Württembergers approved of the Assembly's actions. When they repeated their rejection of the King's revised draft constitution for a third time in summer 1817, however, the Estates started to lose support among the public, which grew increasingly tired of the conflict.¹⁴⁰ The new constitution finally came about in the autumn of 1819 and would endure largely unaltered for a century.

While the practical impact of Hegel's intervention in Württemberg's constitutional conflict is difficult to gauge, he did manage to attract the attention of both the Estates and the King's camp, as the reviews and a governmental subsidy for the dissemination of one hundred copies of the *Assessment* in reprint show.¹⁴¹ Hegel's arguments practically legitimised the King's action, as will be further discussed in Chapter 2. Starting his new appointment at the University of Berlin in 1818, Hegel did not contribute to Württemberg's constitutional conflict with further publications and the notes of his lectures given that year do not contain an extended discussion of the constitutional question either.¹⁴² Yet the *Philosophy of Right* clearly bears the mark of Hegel's engagement with Württemberg's constitutional conflict. Throughout Chapters 3, 4 and 5, we shall see that Hegel's

¹³⁶ *Bemerkungen* 1818, 14. ¹³⁷ [Zahn] 1818, 72–73.

¹³⁸ Huber 2011, 375: letter to Reinhold, 14 July 1817; contrast *ibid.*, 345: letter to (her son) V. A. Huber, 2 June 1817.

¹³⁹ *LW*, 81; Grawert 1989, 137. ¹⁴⁰ Brandt 1987, 29.

¹⁴¹ Rosenkranz 1844, 312; *GW*15, 292.

¹⁴² A mere twenty-one pages of Homeyer's rather careless transcript are dedicated to 'the state': *VPR*18, 309–30.

criticism of the Württemberg Estates provides a crucial background for his elaboration of a system of representation that is neither organised along the lines of the old Estates, nor relies on the individualistic premises of a national representation as tried in revolutionary France.

Although the *Assessment* has been neglected in the literature, the constitutional conflict in Württemberg thus constitutes a highly significant context for the genesis of the *Philosophy of Right*. Consideration of the way in which Hegel employed several of the arguments found in the *Philosophy of Right* in the Württemberg context may add to our understanding of that (in)famous text. While it may be an exaggeration to call Hegel 'the most paramount theorist of South German early constitutionalism',¹⁴³ this phenomenon provides a crucial context for Hegel's political thought and shows that Hegel participated in the struggles for 'the free constitution of a contemporary German state'.¹⁴⁴ It is hardly a coincidence that Hegel's theory of institutions was first outlined in lectures given while the debate about the future shape of the constitution was in full swing. Without detracting from the importance of developments in France and Britain, which were keenly followed by contemporaries, the investigation of Hegel's involvement with the constitutional developments of the Southern German states seems particularly relevant in light of the usual focus on Prussia.

Beyond Borders

The preceding section shows that Hegel's thinking about the constitution was shaped in the immediate context of the Southern German states that he inhabited, and the significance of his involvement in Württemberg's constitutional conflict through the *Assessment*, both in its own right and as a context for the *Philosophy of Right*, should not be underestimated. At the same time, it would be misleading to confine Hegel's constitutional thought to the context of any one particular state, due to both the extent of the general debate and his own aspirations. Württemberg, which contemporaries regularly viewed as a constitutional test case with significance for all of Germany, provides only one instance with much larger ramifications.

Importantly, the question of unification loomed large in Hegel's 'Germany'. While contemporaries used that term widely, no corresponding political entity existed of course. With respect to later nation-state

¹⁴³ Ilting 1983, 19–20. See also Pöggeler 1987, 175–76. ¹⁴⁴ *LW*, 62.

perspectives, it seems especially worthwhile to point out that Austria was subsumed under that designation, which relied mostly on the German language as signifier of a common culture. Especially in the context of the German Federation, the constitutional question was closely linked to the national question. Contemporaries rarely viewed it as restricted to singular states of the former Empire but as a border-crossing matter. While Hegel certainly considered the constitutional question on a broad canvas, he dismissed the national strand in the constitutional debate altogether.¹⁴⁵

In the preface to the *Philosophy of Right*, Hegel notoriously condemns his professional rival Jakob Fries's agitation at the Wartburg Festival in 1817, citing Fries's widely distributed speech *An die deutschen Burschen*.¹⁴⁶ Hegel initially supported the *Burschenschaften* (student fraternities) too and had several personal links to them.¹⁴⁷ He had, for instance, explicitly encouraged his brother-in-law's attendance at the Wartburg Festival and, tellingly, several students came to him from Fries. Yet Hegel always rejected 'Teutonic' or nationalistic (as well as anti-Semitic) tendencies.¹⁴⁸ This helps to understand his opposition to certain other outspoken advocates of constitutionalisation, which besides Fries notably included Ernst Moritz Arndt and the so-called father of the gymnastics movement (*Turnvater*) Friedrich Ludwig Jahn. While Hegel shared with members of the national movement constitutionalist aspirations, he decidedly did not embrace the cause of unification.

Perhaps the most interesting of Hegel's connections with the *Burschenschaften* is through his student and teaching assistant Friedrich Wilhelm Carové, who played a prominent role in the movement. Just like Fries, Carové had given a speech at the Wartburg; and in 1818, Hegel advocated the granting of a doctorate in philosophy to Carové on the basis of his plan for the organisation of student fraternities.¹⁴⁹ A quotation from Hegel's *Assessment* serves as motto for Carové's work, which is 'dedicated to my German brothers, with love'.¹⁵⁰ In opposition to a more radical wing

¹⁴⁵ Avineri 1962, 46 aptly characterises Hegel as 'a thinker who opposed every attempt at political unity in Germany'. Cf. Avineri 1972, 80. Losurdo 1989, 191–222 also treats Hegel and 'the German national question'.

¹⁴⁶ Fries 1817; see *PR*, preface, 9. On the Wartburg Festival's historical context and significance, see now Bauer, Gerber and Spehr 2020.

¹⁴⁷ See, for instance, D'Hondt 1988, 101–18; Pinkard 2000, 395–99.

¹⁴⁸ On Hegel's relations with Jewish contemporaries and his attitudes towards Jewish emancipation and anti-Semitism, see (next to biographical accounts) Smith 1991; Meyfeld 2014; Brumlik 2015. Yovel 1998 examines in detail 'the gulf between Hegel's critique of historical Judaism and his support of Jewish emancipation in the present' (94).

¹⁴⁹ Carové 1817; Nicolin 1963, 162–63.

¹⁵⁰ Carové 1818, III. The Hegel quotation on page V corresponds to *LW*, 41.

of the *Burschenschaften*, Carové exerted a moderating influence and the Heidelberg branch in which he was active remained the only fraternity to admit Jewish members. Hegel was equally credited with advancing the 'suppression of exaggerated *Deuschtümerei*' by members of the movement.¹⁵¹

In the *Philosophy of Right*, Hegel comments on nationalist aspirations at §322A, saying that those who wish for unification know little about the nature of a union and a people's independence. In the early lectures, he asserts that the average German wishes for 'federal association', not for unification.¹⁵² In direct opposition to those who called for a united Germany, Hegel maintains that most people won't even understand what that is supposed to mean.¹⁵³ Even Hegel's definition of patriotism is detached from coeval aspirations for German unification (§268&A).¹⁵⁴ As his correspondence shows, Hegel himself reserved the label of countryman or -woman for fellow Württembergers while describing Bavarians as compatriots of his wife Marie, who came from Nuremberg.¹⁵⁵ One who did claim that 'everybody will want to be only a German' was the author of the much-discussed *To All German Men*, Christian von Massenbach, a failed military strategist formerly in Prussian service turned pamphleteer.¹⁵⁶ In his lectures, Hegel dismisses Massenbach's acting the part of a patriot and enlists his views as an example of the poor judgement of state affairs Hegel considers so widespread among the Germans.¹⁵⁷

In his correspondence, Hegel further ridicules leading figures in the movement for unification. When Johann Gottlieb Fichte emerged as a champion of the national cause, Hegel had nothing but scorn for him. He condemned Fichte's *Grundzüge des gegenwärtigen Zeitalters* (*Characteristics of the Present Age*) from 1806 and wanted to review his famous *Reden an die Deutsche Nation* (*Addresses to the German Nation*) when they appeared in print in 1808.¹⁵⁸ From his correspondence with Friedrich Wilhelm

¹⁵¹ BZ, 214 (Karl Förster, 24 July 1820). See also BZ, 180.

¹⁵² VPR7, 212. Later, Hegel would admit that small states may gain by integration into a larger and well organised one; see VPR24, 1469.

¹⁵³ VPR9, 531. ¹⁵⁴ On this topic, see Moland 2007, 2011.

¹⁵⁵ E.g. BII, 52, 127, 143. At BII, 225, he refers to Württemberg as 'the old fatherland' (Hegel to Göriz, 19 March 1820).

¹⁵⁶ Massenbach 1817b, 28. Hegel attests Massenbach 'utter incompetence' with reference to an error of judgment which contributed significantly to the Prussian army's defeat by the French in 1806 (VPR17, 160).

¹⁵⁷ VPR7, 160 and 202. VPR24, 1462 seems to allude to Massenbach too: 'A chatterer may easily gain the renown of a great patriot, but such reputation soon passes.' Massenbach had been imprisoned by the Prussian authorities by then.

¹⁵⁸ BI, 235: Hegel to Creuzer, 28 June 1808.

Joseph Schelling emerges that Hegel found Fichte's nationalist stirrings rather ridiculous. Both must have disagreed especially with Fichte's anti-French sentiment and, in allusion to the 1806 title, Schelling speaks of Fichte's 'blind struggle against the age [*das Zeitalter*]'.¹⁵⁹ Given Hegel's general Francophilia and his admiration for 'the great Napoleon', his aversion to nationalist stirrings in the wake of the 'liberation, which is supposed to have happened' is not surprising.¹⁶⁰ Ironically, he remarks upon the availability of proper coffee as one of the benefits of French defeat and, not without biting sarcasm, portrays the 'liberators' as worse than the occupants.¹⁶¹

Hegel's distaste for nationalist aspirations is also vividly documented in a letter to his friend Paulus from 1814. There, Hegel teases Paulus for reviewing not only the 'latest political pamphlets' but also the burgeoning literature on 'German clothes and customs'.¹⁶² The latter was a manifestation of anti-French sentiment, with German national costume demanded as a demonstration of loyalty to the common cause against the foreign invaders.¹⁶³ Hegel in contrast sported 'Napoleon's haircut' all his life.¹⁶⁴ In fact, Hegel dismisses the instrumentalisation of cultural artefacts altogether, mentioning the Song of the Nibelungs, Albrecht Dürer's woodcuts or the imperial crown and insignia as 'old German monuments and patriotic antiquities of all kinds'.¹⁶⁵ While Hegel reportedly opposed the 'caricatures' (as Jahn called them) of the gymnasts presented in the Breslau professor Henrich Steffens's 1818 *Turnziel*, he ridiculed the gymnastics movement too.¹⁶⁶

In the context of national costume, Hegel especially taunts Ernst Moritz Arndt, a well-known agitator for the German cause, and suggests in the letter to Paulus that Arndt should next write a treatise on toilets. In a twist on the word Germandom (*Deutschum*), Hegel speaks of 'the praised land

¹⁵⁹ *BI*, 133: Schelling to Hegel, 11 January 1807. Cf. *BI*, 180: Hegel to Niethammer, 8 August 1807. See also Hegel to Schelling, 3 January 1807 (*BI*, 131).

¹⁶⁰ *BII*, 23: Hegel to Paulus, 18 April 1814.

¹⁶¹ *BII*, 14–15: Hegel to Niethammer, 23 December 1813. Coffee is mentioned *ibid.*, 29.

¹⁶² Paulus 1814a, 'Neueste politische Flugschriften'; 1814b, 'Flugschriften, teutsche Kleider und Sitten betreffend'.

¹⁶³ For more on this topic, see Wagner 2018. ¹⁶⁴ Pinkard 2000, 106.

¹⁶⁵ *BII*, 43: Hegel to Paulus, 9 October 1814. Hegel also rejects 'nationalisation' of the Song of the Nibelungs in his *Lectures on Aesthetics* (see Pöggeler 1971, 85).

¹⁶⁶ *BZ*, 189 (letter by Jahn from 13 November 1818); *BZ*, 208 (retrospective account by Heinrich Leo, former member of the *Burschenschaft*). On the so-called *Turnfehde* of Breslau, see, for instance, Düding 1984; Bergner 2016. In Berlin, Hegel was reportedly on friendly terms with Steffens (*BZ*, 195, 277).

of German-dumb' (*Deutschdumm*) as the place where Arndt is at home.¹⁶⁷ Sarcastic comments on an excerpt from Arndt's German history of the same year further confirm Hegel's hostility towards Arndt's attitudes.¹⁶⁸ Both of them agreed, however, on the necessity of constitutional government, as illustrated by the epigraph that Arndt, who was also a poet, chose for his pamphlet *Ueber künftige ständische Verfassungen in Teutschland* (*On future estate-based constitutions in Germany*): 'The prime majesty in life, The highest is called law and right.'¹⁶⁹ Such basic agreement was, however, certainly not enough for Hegel.

The fact that Hegel completely passed over the German Federation and the Bundestag, which started to meet in Frankfurt in 1816 and certainly did not escape his attention,¹⁷⁰ was noticed by his contemporaries. An anonymous critic of the *Assessment* explains that Hegel 'thereby denies the existence of an aggregate Germany as federal state'.¹⁷¹ In his correspondence, Hegel's old friend Schelling puts his finger on this notable absence too and comments that ignoring the Federation was 'perhaps the best one can do'.¹⁷² Indeed, Hegel's silence must be interpreted as a deliberate strategy, and perhaps his disillusionment with the Old Empire helps to explain why he pinned rather little hope on a federal future. But even less did Hegel support the case for a united Germany.

In contrast, the European dimension is clearly visible in Hegel's constitutional thought, with France and Britain as the countries whose political systems he invokes most often.¹⁷³ After all, contemporaries regarded the English constitution as the very model of a liberal constitution, and many of the institutional questions addressed by German writers like Hegel echoed earlier constitutional debates in France, such as those surrounding the royal veto or the imperative mandate.¹⁷⁴ Impressed by the Revolution, which broke out when he was eighteen, Hegel had been following the developments in France particularly closely, and his personal library held copies of several consecutive versions of the French constitution from the

¹⁶⁷ *BII*, 43. Caroline Paulus uses the same phrase in a letter from December 1815; *BII*, 63.

¹⁶⁸ *GW*22, 7–8. Excerpt from Arndt 1814a. ¹⁶⁹ Arndt 1814b, 1814c, 222.

¹⁷⁰ For instance, Hegel evidently considered the opening speeches of the Bundestag worth buying; his library contained copies of Heeren 1816 (*K* 1234) and [Buol-Schauenstein] 1816 (*K* 955).

¹⁷¹ *Bemerkungen* 1818, 2. ¹⁷² *BZ*, 163 (Schelling to Niethammer, late 1817).

¹⁷³ In addition to the biographical studies mentioned in the Introduction, Waszek 1988 provides useful information on Hegel's knowledge of English and access to Anglophone sources; see also Jamme and Weisser-Lohmann 1995.

¹⁷⁴ The controversies surrounding voter instructions for representatives in eighteenth-century Britain and revolutionary France are succinctly discussed in Bourke 2015, 379ff. and Rubinelli 2020, 36ff., respectively. Hegel's rejection of mandates features in Chapter 5 below.

1790s.¹⁷⁵ He does not mention the *Charte constitutionnelle* of 1814 in the *Philosophy of Right* but commends it as a 'beacon' in the lectures of 1817 and mentions Louis XVIII alongside the revered lawgivers Solon, Lycurgus and Moses in the *Assessment*.¹⁷⁶ To privilege the importance of the *Charte* to Hegel's constitutional thought at the expense of the German debate, however, misses the point.¹⁷⁷ By outlining a constitution resembling the French or English (ideal) type, contemporaries were exactly taking a position within the German debate. This shall be demonstrated in Chapter 2.

¹⁷⁵ 1791 (*K* 1262), 1793 (*K* 1263), 1794–95 (*K* 1215*, *K* 1265), 1797–98 (*K* 1264, *K* 1217*), 1799–1800 (*K* 1215*). *Due to a mistake in numbering, the auction catalogue lists items 1213–22 twice.

¹⁷⁶ *VPR* 17, 163; *LW*, 77–78.

¹⁷⁷ Iltis 1983, 27 has done so, characterising the German constitutional debate as 'muddled, diffuse and provincial'.

On the Nature of Constitutions

The organisation of freedom, the rationality of a people is the constitution.

Lectures on the philosophy of right (1817)

The question of political change and its legitimacy was forcefully raised in Hegel's lifetime by the French Revolution and exercised a general fascination on the minds of contemporaries. Hegel staunchly advocated such change but emphatically rejected the possibility of making constitutions from scratch. These two seemingly opposite positions are aligned in Hegel's organicist conception of the constitution. In this chapter, I place his account of the nature of constitutions in the context of discussions surrounding what may be termed 'constitutional transferability' and explore contemporaries' attempts to navigate the tension between history and freedom. The most important reference points in this respect were the French Revolution and the English constitution, or at least ideal types thereof, which signified the championing of universal principles and historical development, respectively.

First, I will introduce Hegel's conception of the constitution as an organism that grows and develops over time in accordance with a people's spirit (*Volksgeist*). Based on the lessons of failed experiments with 'abstract principles', he denied the possibility of deriving constitutions 'a priori'. In this context, I argue that Hegel's rejection of contractarianism constitutes an ideological position of immediate purport. Considering Hegel's support for the introduction of written constitutions and legal codification in light of his denial of making constitutions, I make the case for viewing Hegel's account of the nature of constitutions as supporting a specific kind of constitutionalism while discrediting another. Hegel's nevertheless existing commitment to the ideals that inspired the revolutionaries will also be discussed with recourse to his constitutionalist approach to world history. I argue that Hegel sought to resolve the inherent tension between universal

demands of reason and local particularity by inscribing the progress of world history with freedom and the representative system. With especial reference to contemporary discussions of the English constitution, I will show that in doing so, he could draw on prevailing views. Hegel's influential attempt to reconcile organic growth with the demands of reason, history with freedom and community with the individual is thus lifted out of isolation.

Organic Origins

In the remark on §273 of the *Philosophy of Right*, Hegel dismisses the question '*who should make the constitution?*' as 'pointless' altogether. To his mind, it is an 'entirely abstract, empty question' because it assumes that there could be a people without a constitution.¹ The organic state, however, presupposes the existence of a constitution; without it, there would be 'a mere atomistic *crowd* of individuals' (§273A) or 'a formless mass, which is no longer a state' (§279A). Without the necessary '*articulation of the whole*', meaning a rational and organic organisation of the body politic, 'the *people*' is nothing but an 'indeterminate abstraction' (§279A). In the early lectures, Hegel illustrates this with a metaphor: while the solar system as a whole is rationally organised, this cannot be said about the sun or the earth on their own; rationality is only to be found in their 'organisation in time and space'.² (Hegel had explored exactly this in his *Dissertatio Philosophica de Orbitis Planetarum*, which gained him the license to teach at university in 1801.)

In the same way, a people without a constitution lacks rational organisation; in this condition, sovereignty does not exist. 'Constitution', Hegel accordingly insists in the lectures, 'is always present, where there is something which may be called state'.³ The existence of a people in the true sense of the word – which does not apply to 'nomads, fishing peoples' or 'a state of barbarians' but is signified by the existence of a proper legal system expressed in 'a code of law' – thus presupposes a constitution.⁴ Accordingly, there is no need for 'making' a constitution in the first place. The organic constitution is beyond the realm of artifice or man-made things; as Hegel says in the lectures, 'the constitution cannot be made, but

¹ VPR17, 163. ² VPR17, 153. ³ VPR24, 1422; cf. VPR19, 539.

⁴ VPR24, 1447. On the need for a legal code, see the section on codification under 'Modern Lawgivers' below.

makes itself, is a divine gift' or indeed 'holy'.⁵ The same is expressed more ponderously in the *Philosophy of Right*, when Hegel writes that the constitution is 'that which has being in and for itself, and should therefore be regarded as the divine and enduring, and as above the sphere of that which is made' (§273A). Consequently, 'the answer' to the question of who should make the constitution 'is nobody, but it makes itself'.⁶

In line with the constitution's virtually eternal presence, the *Encyclopedia* of 1817 contains a handwritten note saying that the constitution 'is not given but is in and of itself'.⁷ Hegel maintains as 'utterly essential that the constitution should *not* be regarded as *something made*' and explains that, with regard to the constitution understood as a ground plan of the body politic, the term 'make' can only signify the making of changes (§273A). That such change should take place, however, is beyond doubt for Hegel, and a commitment to it is inherent to his organicist conception of the constitution. The constitution is not immutable but steadily evolving; like any organism, it grows and evolves over time. In this vein, Hegel explains that 'the constitution *is*, but just as essentially it *becomes*'.⁸ In the *Assessment*, this is expressed as follows: 'a constitution [is] generally something stable indeed, yet not something simply inactive'.⁹ It is not set in stone but essentially malleable; and while its principle may remain the same, its appearance continually changes: 'it remains the same constitution, but it always changes', like all living things.¹⁰

According to §298 of the *Philosophy of Right*, the constitution is further developed through laws and governance in a continuous process. As a result, it is 'the work of centuries', even 'millennia', for it takes time for a constitution to develop 'bit by bit'.¹¹ While some things 'become a habit' and subsequently law, others 'decay' and are dismissed.¹² The change effected in this way is 'imperceptible' and even goes 'unnoticed' at first.¹³ It becomes visible, Hegel tells his students, 'if one looks at a constitution in intervals of 25 – 50 – 100 years'.¹⁴ At bottom, the constitution is eternally existent and eternally changing.

Hegel's deeply organicist and historicist conception of the constitution reveals him as a child of his time. Contemporaries on all ends of the political spectrum subscribed to the notion that constitutions should grow organically and develop over time. The Kiel professor and publicist Friedrich Christoph Dahmann, for instance, who enjoys a reputation

⁵ VPR18, 313; VPR19, 530. ⁶ VPR17, 163. ⁷ E, 475. ⁸ VPR22, 1024 –PR §298Z.

⁹ LW, 121. ¹⁰ VPR24, 1423. ¹¹ VPR22, 1011; VPR21, 596; VPR24, 1422.

¹² VPR19, 530. ¹³ VPR22, 1024 –PR §298Z. ¹⁴ VPR19, 530.

as an early liberal, thought of them as malleable but following historical tradition.¹⁵ The opening speech of the Bundestag in Frankfurt in 1816, of which Hegel bought a copy, conveys a very similar message.¹⁶ It was delivered by the Austrian envoy Count of Buol-Schauenstein, who affirms that peoples are ‘the achievement of time’ and, implicitly recalling the French experience, that public life may not be formed ‘according to mere abstractions’. Instead, it is ‘the result of the most diverse influences . . . national character, geographical position, other local circumstances, customs, religion, the principal occupation of the people’.¹⁷ This statement is emblematic for the commonplace view that political forms grow organically, in congruence with a people’s character. The parallels with Hegel are overwhelming.

In this context, Hegel’s debt to Montesquieu and his ‘famous’ (§261A), even ‘immortal’ work of 1748, *De l’esprit des loix* comes into view.¹⁸ Consider the work’s programmatic subtitle alone: *ou du Rapport que les loix doivent avoir avec la constitution de chaque gouvernement, les mœurs, le climat, la religion, le commerce, etc.* Notwithstanding his usual economy of references, Hegel especially credits Montesquieu with ‘the philosophical view, to only regard the part in its relation to the whole’ (§261A), namely legislation ‘in connection with all other determinations which make up the character of a nation and a time’ (§3A). Hegel’s constitutional as well as legal thinking is clearly indebted to this point of view, according to which any constitution is shaped by factors such as geography, climate, the size of states and their history.¹⁹ In the section of the *Philosophy of Right* dedicated to world history, Hegel explains that ‘states, peoples and individuals’ appear in world history with a certain ‘*particular determinate principle*’. This is expressed through ‘their *constitution* and the whole *range* of their *condition*’ (§344), their ‘*geographical* and *anthropological* existence’ (§346).

Hegel developed this further in his lectures on the philosophy of history held in the late 1820s. As posthumously published in the collected works edition by a group of his students, they contain a section explicitly dedicated to the ‘geographical basis of world history’.²⁰ To Hegel

¹⁵ Dahlmann 1815. For a recent appraisal of Dahlmann’s constitutional thought, see Bleek 2007.

¹⁶ [Buol-Schauenstein] 1816. In Hegel’s library as K 955.

¹⁷ [Buol-Schauenstein] 2016, 174. Here as in all translations that follow, I retain the author’s use of the word ‘national’ while translating ‘Volk’ as ‘people’ rather than ‘nation’.

¹⁸ GW4, 481; Hegel 1999, 175 (essay on natural law from 1802).

¹⁹ See for instance VPR17, 168–69.

²⁰ VPG, 105ff. On ‘Hegel’s geographical thought’, see Bond 2014, who briefly addresses Hegel’s relation to the two most prominent contemporary geographers, Carl Ritter and Alexander von Humboldt.

the idealist, however, the notion of a people's inner development was more important than any external conditions. In this vein, he observes that, like all law, 'the constitution of a specific people depends in general on the nature and development of its self-consciousness'. Hegel sees the constitution as essentially an expression, or rather an embodiment of the *Volksgeist* and refers to 'the state, as the spirit of a people' (§274). Instead of being made, the constitution evolves organically in accordance with the people's spirit: 'Its absolute cause is the principle of a people's spirit which develops in history.'²¹ Because spirit develops over time and is essentially 'changing', there is no standstill in history.²² As mentioned before, Hegel considers such change to be often imperceptible and happen over extended periods of time. After all, a people's consciousness cannot be changed 'all of a sudden'.²³

In his early lectures on the philosophy of right, Hegel even grants the constitution some degree of 'higher authority' on account of its historical evolution.²⁴ Yet he was never willing to accept the status quo unquestioningly, and there are many occasions on which he criticises the very outcome of historical development. Hegel's organicist conception of the constitution certainly does not render him a traditionalist. True authority lay only in a constitution's 'rationality' and its 'congruence with the people's spirit'.²⁵ Already in his first drafts on Württemberg's constitution from 1798, Hegel had argued that institutions, constitutions and laws that do not converge with a people's customs, needs and opinions must perish. Two decades later, he still considered it to be 'beyond question' that a 'change of constitution' was necessary in cases where it had become 'ossified'.²⁶ That Hegel did believe in the necessity of man-made change is evident from the following tautology: 'If a change is supposed to happen, then something must be changed.'²⁷ The insistence on 'a constitution appropriate to the needs of the time' and the abandoning of 'dead forms', as Hegel's friend Friedrich Förster put it, was commonplace in the early nineteenth century.²⁸

Practically, Hegel thought, discrepancy between a people's spirit and the form of its constitution will have dramatic consequences. As he puts it in the lectures of 1817/18, 'the advancement of the spirit without corresponding advancement of institutions ... is the source ... of revolutions'.²⁹ The same transcript contains a sentence Hegel would develop into the infamous double dictum in the preface to the

²¹ *VPR*17, 163. ²² *VPR*24, 1423. ²³ *VPR*19, 530. ²⁴ *VPR*17, 163. ²⁵ *VPR*17, 165.

²⁶ *E*, 481, 479, 479. ²⁷ *GW*2, 104. ²⁸ Förster 1818a, 342, 343. ²⁹ *VPR*17, 187.

Philosophy of Right. In the context of the development of a people's spirit and its constitution, he is recorded to have said that 'what is rational must happen', with rationality meaning accordance with the *Volksgeist*.³⁰ The way Hegel sees it, it is irrational to cling to the past because the development of 'the world spirit' cannot be resisted anyway, it marches – in the famous phrase – 'onwards irresistibly through thick and thin'.³¹ Most impressively, Hegel describes this unfolding of spirit through world history as 'the true *theodicy*'.³² He is particularly fond of Schiller's dictum of world history as a universal court of judgement ('*Weltgeschichte*, als *dem Weltgerichte*', §340).³³ In Hegel's teleological view, world history is determined '*a priori*' and presents 'absolute justice' or, variously, a 'divine tragedy'.³⁴ Yet the element of timing is crucial in this context. Hegel describes as pointless the introduction of institutions whose time has not yet come and insists that 'what it is time for happens necessarily'.³⁵ As he says in another lecture, 'God has time enough, what is supposed to happen, will happen'.³⁶

Hegel's notorious insistence on the congruence of the rational and the actual thus has immediate applicability to the constitution: antiquated 'moments of the constitution ... must collapse and no power can uphold them'. One such moment that still haunts 'the present state of European peoples' is the feudal system.³⁷ It is at odds with 'the current *Zeitgeist*' because it contradicts 'the freedom of property and the person' and therefore the entire 'idea of right'.³⁸ It sounds almost like a revolutionary appeal when we read the following: 'Everywhere where the spirit has reached a higher consciousness, the struggle against such institutions is necessary'.³⁹ In this sense, the French Revolution was historically necessary.

In the revised edition of the *Encyclopedia*, Hegel reiterates that the constitution emanates from a people's 'immanent spirit and history' and compares the question of who should make the constitution to the question 'who should make the spirit of a people'.⁴⁰ Both are equally ludicrous to him, as is the idea that one was possible without the other.

³⁰ *VPR*17, 164. ³¹ *BII*, 86; Hegel to Niethammer, 5 July 1816.

³² *VPG*, 540. See also the introduction to Hegel's *Lectures on the Philosophy of History*. In this context, however, it should be recalled that Hegel 'relies on no traditional notion of a separate, benevolent deity' (Pippin 2017, 251). Later in the *Lectures on the History of Philosophy*, Hegel says that 'philosophy is the true theodicee' because it reconciles Concept and actuality (Hegel 1986c, 455).

³³ The dictum, already used by Hegel in *E* §448, derives from Schiller's 1786 poem 'Resignation'. See also Lucas 1984.

³⁴ *E*, 489, 487; *VPR*17, 218. ³⁵ *VPR*19, 338. ³⁶ *VPR*21, 765. ³⁷ *VPR*18, 234.

³⁸ *VPR*18, 234, 235, 235. ³⁹ *VPR*18, 235. ⁴⁰ *GW*20, 513 (*Encyclopedia* 1830, §540A).

In order to make a constitution, Hegel tells his students in the lectures of 1824/25, it would have to be possible for a people to 'leave its skin'.⁴¹ This literal image corresponds to the English proverb that a leopard cannot change its spots and demonstrates just how intricately Hegel conceives political life to be connected with the people's consciousness.

The organicist conception of the constitution carries clear implications for constitutional transferability, which is concomitant with the question of making constitutions that Hegel so vehemently dismisses. As Montesquieu put it, 'it is very unlikely that the laws of one nation can suit another'.⁴² If one conceives of the constitution as an expression of the people's spirit, it is completely 'irrational' to try and apply the principles of one state's constitution to another.⁴³ This judgement on Hegel's part constitutes a statement of immediate resonance in the context of early nineteenth-century endeavours of state-building, as I shall show in the following sections. The most important reference point was without a doubt the French Revolution, an endeavour that had seemed to deny the very notion of an organic constitution.

French Abstractions

The revolutionary legacy in Hegel's thought is notoriously complex.⁴⁴ Impressed by the French Revolution, which broke out when he was eighteen, Hegel had always been following developments in France particularly closely, and his personal library held copies of several consecutive versions of the French constitution from the 1790s.⁴⁵ While he considered the French Revolution a historical necessity and allegedly toasted to the storming of the Bastille every July 14, Hegel was only too acutely aware of its destructive consequences.⁴⁶ His simultaneous identification with the revolutionary cause and abhorrence of its bloody course decisively shaped his account of the nature of constitutions. On the one hand, Hegel's constitutionalism was informed by the view that no society could claim to have a constitution in place without a guarantee for human rights and

⁴¹ VPR24, 1422. ⁴² Montesquieu [1748] 1989, 8. ⁴³ VPR17, 168.

⁴⁴ For a classic exploration of *Hegel and the French Revolution*, see Ritter 1957, transl. 1982. A fresh treatment of the subject is offered by Richard Bourke in his forthcoming *Hegel's World Revolutions*. For more perspectives, see Riedel 1969, transl. 1984; Smith 1989; Fulda and Horstmann 1991; Schmidt 1998; Wokler 1998; and Maliks 2021.

⁴⁵ 1791 (*K* 1262), 1793 (*K* 1263), 1794–95 (*K* 1215*, *K* 1265), 1797–98 (*K* 1264, *K* 1217*), 1799–1800 (*K* 1215*).

⁴⁶ Friedrich Förster first told the toasting story following his visit to Dresden with Hegel in July 1820 (*BZ*, 213f., 207).

the separation of powers, as proclaimed by Article XVI of the *Déclaration des Droits de l'Homme et du Citoyen*.⁴⁷ On the other, he was anxious to assert that humans may only effect gradual changes rather than hope to successfully overhaul an existing state all at once. The experience of the Terror and the ensuing Napoleonic wars (during which Hegel lost his foothold in Jena and a brother who died on Napoleon's Russian campaign) led him to deny the possibility of making constitutions from scratch and to insist on the organic nature of the constitution.

Famously, Hegel diagnosed the derailment of the French Revolution as resulting from the attempt to force abstract principles onto reality.⁴⁸ Showing zero awareness of prevailing 'disposition and religion', the revolutionaries had exactly disregarded the precepts of the people's spirit.⁴⁹ Their excessive commitment to absolute freedom had unleashed 'the fury of destruction' and presented an insurmountable obstacle to the introduction of any lasting order (§5A; cf. §29A). Hegel agrees with the idea that 'the Revolution received its first impetus from philosophy', and when he speaks of the abstractions that governed the course of the French Revolution, it is with an eye to social contract theory as propounded by Jean-Jacques Rousseau.⁵⁰ He clearly identifies the Revolution as the 'attempted realisation' of 'the false theories ... which have chiefly emanated from *Rousseau*' (§258, n.).

Hegel, who enthusiastically imbibed Rousseau's writings as a student, commends the Genevan for having established 'the *will* as principle of the state' (§258A) and even credits him with being the first profound theorist of the state.⁵¹ Yet the big mistake of the author of *Du contrat social*, according to Hegel, has been to focus exclusively on the will of individuals. In Hegel's contested interpretation, which seems wilfully amiss, Rousseau based the general will merely on agreement between numerous individual wills rather than 'the will's rationality in and for itself' (§258A). Thereby, he has effectively rendered individual arbitrariness 'the sole principle' of the state.⁵² In the German context, Hegel especially attributes this view to his predecessor in the Berlin chair of philosophy, Johann Gottlieb Fichte,

⁴⁷ Hegel clearly echoes this in *GW*2, 109.

⁴⁸ Hegel offered this explanation in the *Phenomenology* of 1807 already; see the section on 'Absolute Freedom and the Terror' (*GW*9, 316–23).

⁴⁹ *VPG*, 532.

⁵⁰ *VPG*, 528. E.g., Keyserlingk 1818, 113 critically notes that the French Revolution is commonly seen as 'the fruit of philosophy', and especially of Rousseau's (128).

⁵¹ *VPR*19, 516. The importance of Rousseau's innovation for Hegel is analysed by Neuhouser 2000.

⁵² *VPR*24, 1166. See further Hegel 1986c, 307. For Rousseau's actual differentiation of 'la volonté de tous & la volonté générale', see Rousseau 1762a, Book II, Chapter III (*K* 1181 in the auction

who had discussed the legitimacy of changing the constitution at length in his *Beitrag zur Berichtigung der Urtheile des Publikums über die französische Revolution* (*Contribution to the Rectification of the Public's Judgment of the French Revolution*) of 1793.⁵³

As we shall see in the following chapters, Hegel built human will into the rational constitution in several different ways. Sharing the revolutionary aspiration to provide the state with a rational foundation, he persistently laboured to reduce the degree of contingency attendant on it. Welcoming and sharing the aspiration to provide the state with a rational foundation – which he considered a theoretical revolution that realised Plato's idea of philosopher-kings – he had no illusions about the fact that the revolutionaries, as well as the proponents of social contract theory, got it entirely wrong. The abstract notions of the social contract and general will had produced the 'tremendous spectacle to begin the constitution of an actual large state, with the overthrow of everything existing and given, from the very start and from *thought*' (§258A).

A contemporary critic considered fit to call Hegel's emphasis on the unity of government and people and his rejection of the contract 'the true key to his system'.⁵⁴ Throughout virtually all of his writings and lectures, Hegel never tires to insist that it is enormously mistaken to think of the state and its constitution as a contract, whether it be imagined 'as a contract of all with all or as a contract of all with the prince and the government' (§75A).⁵⁵ The fundamental problem he diagnoses in this way of thinking is that it renders the state dependent on 'arbitrary will, opinions and discretionary, express consent' (§258A). Above all, Hegel reproaches contractarians for extending the principle of private interests, which governs civil society, into the state.⁵⁶ To think of the constitution as a contract would render it nothing but an '*arbitrary* agreement of different

catalogue of Hegel's library). On Hegel's complicated relation with social contract theory, see, for instance, Kelly 1969; Riley 1982; Petersen 1992; Patten 1999 (chapter 4); and James 2013.

⁵³ Hegel was clearly familiar with this work, which formed part of his library (*K* 1233): in *VPR* 7, 29, he mentions Fichte's criticism of Rehberg, who had published his own *Untersuchungen über die Französische Revolution* (*Investigations Concerning the French Revolution*) in 1793. For Fichte's contractarian account, see esp. Fichte 1797, §17 (*K* 102 in Hegel's library). The 'common will' is also discussed in Fichte 1796, 179ff. (*K* 101 and *K* 1058).

⁵⁴ [Zahn] 1818, 63.

⁵⁵ I think Nisbet's consistent translation of Hegel's *Fürst* as 'sovereign' is somewhat misleading because, as is discussed below, Hegel conceives of sovereignty as a property of the state, which is then embodied by the monarch (see *PR* §279A).

⁵⁶ Hegel also argues that contract theory confuses cause and effect by presupposing the existence of the very kind of willing rational agent that comes into being only as a result of the polity – individuals are only free in the state; for more on this, see, e.g., Patten 1999, 115–19.

persons on an *arbitrary* and *contingent* matter'.⁵⁷ There was simply no guarantee that such a contract would endure, as the sphere of inter-state relations amply illustrated (§333&A). Some contemporary authors equally recognised this fundamental problem. The Kiel professor and publicist Franz Hermann Hegewisch, for instance, considered the device of 'an imaginary basic contract' – Rousseau's *pact fondamental* – to be a straightforward instance of turtles all the way down: it deferred the problem of foundations ad infinitum.⁵⁸

In the way Hegel interpreted contract theory, it rendered the state contingent on the individual will of the members of the multitude and thereby banalised its existence. While contracts originate in 'random circumstances', Hegel wants to say, the state does not simply come about by chance, even though its historical origins are irrelevant.⁵⁹ It does not exist to satisfy human demands for 'the security and protection of property and personal freedom' (§258A; cf. §324A) but constitutes an 'end in and of itself' (§258). To imagine the state as founded on the self-interest of individuals is to confuse it with civil society. Personal relations and contracts may be governed by whims and arbitrariness, but 'to be members of the state' is 'the *highest duty*' for human beings (§258). This is their destiny, for it is only by being members of the state that their '*substantial freedom*' (§257) may be realised: 'The state is the actuality of concrete freedom' (§260). In relation to contractarian accounts of natural freedom, it is helpful to put this more drastically: according to Hegel, there simply is no freedom without the state. As one of his students observed, 'man outside the state' is hardly a man at all to Hegel.⁶⁰ Here, the contrast to Fichte could hardly be greater, who claimed that the state, being a mere means to an end, could be relinquished once society had been perfected: 'there will certainly be a point in the a priori foreordained career of the human species when all civic bonds will become superfluous Until we have reached this point we are, speaking quite generally, not even true men.'⁶¹ Contractarians, in Hegel's view, thus fail to perceive the state's rationality and how it enables freedom in the first place. As a 'citizen', the individual finds 'the satisfaction of his substantial being, the consciousness and self-awareness of being a member of this whole' (§261A). The state is thus not just 'an *external* necessity' but an '*immanent* end' that renders

⁵⁷ *E*, 236 (§440). ⁵⁸ Hegewisch 1816, VII. ⁵⁹ *VPR*22, 839.

⁶⁰ *BZ*, 211. (Richard Rothe to his father, 5 January 1820). In this respect, there is agreement between Hegel and Ancillon (1816, 8), who differed very much otherwise; see below.

⁶¹ Cited in Nakhimovsky 2011, 20 (the original text in question is Fichte 1794).

humans whole (§261). Political community, for Hegel, is not optional but necessary and not because it satisfies their needs, which happens in civil society, but because only here human beings may find fulfilment.

To portray the state as based on human arbitrariness, as Hegel thinks social contract theory does, is just as 'one-sided' as to consider it a product of divine authority; in dialectical fashion, both aspects exist within the state.⁶² The basic truth reflected in theories of divine right is the notion of unconditionality, or its exception from human artifice (§279A). For this reason, Hegel finds it helpful to describe the state as an expression of 'divine will' (§271A). It is in this sense, and not as 'worship of the state', that the notorious notion of the state as 'the march of God through the world' must be understood.⁶³ In fact, the latter constitutes an imprecise translation that has been countlessly repeated,⁶⁴ despite early criticism of mistranslations of the passage.⁶⁵ The sentence that Gans took from the lecture transcript of 1824/25 and inserted into the 1833 edition of the *Philosophy of Right* rather says 'it is the way of God in the world that the state be' or 'that there is a state'.⁶⁶ Hegel finds it appropriate to conceive of the state as quasi-divine because this way of thinking reflects the fact that the state's existence is rationally necessary. Exactly this sense is lost when the state is likened to a contract, which is entered into at personal discretion and may be dissolved at a whim. Such arbitrariness has no place in the realm of ethical life; it is just as little applicable to the state as it is to marriage (§281A).⁶⁷ While the analogy of the contract at least extends to marriage in the sense that it is entered at will on both sides, 'the nature of the state is that before which arbitrariness disappears'.⁶⁸

The problem with social contract theory is its disregard for exactly this higher purpose of the state that transcends all individual interest. Instead, it places the state on an atomistic foundation, which is altogether shaky and unreliable, because contracts are by their nature finite and susceptible to dissolution at any time. Social contract theory, in Hegel's view, renders the state a matter of arbitrariness, contingent on the will of individuals who have no idea of what they want or what is good for them. Surely, the state

⁶² VPR19, 514. ⁶³ Popper 1945, 29.

⁶⁴ Lately, for instance, in Clark 2006, 431 as 'God's march through the world'. The same problem exists with Nisbet's translation: 'The state consists in the march of God in the world.'

⁶⁵ E.g., by Kaufmann 1970, 4.

⁶⁶ VPR24, 1406; PR §258Z: 'es ist der Gang Gottes in der Welt, daß der Staat ist'. Cf. Knox's translation: 'It is God's way in the world that the state should exist.'

⁶⁷ Cf. PR §75 and contrast to Kant 1797, §§24–27.

⁶⁸ VPR19, 516. However, like entering the state, entering the state of marriage is also an 'ethical duty' (PR §162A).

cannot be based on such foundations when its existence is a rational necessity. Designed specifically to overcome arbitrariness, the constitution must have a '*substantial* and *absolute*' character instead.⁶⁹ Unlike a contract, 'the relation between prince and subjects, government and people' is 'objective, necessary, independent of arbitrariness and whim'.⁷⁰ From Rousseau's and Fichte's alleged emphasis on individual will, on the other hand, follows the destruction of 'the divine which has being in and for itself and its absolute authority and majesty' (§258A). To put it differently, the idea that the state relies on the consent of individuals breaks completely with the true organicist conception of the constitution – or so Hegel argues.

It is not for nothing that Hegel reminds his readers that the application of the contractual idea to the state has produced 'the greatest confusions in state law and in reality' (§75A). This refers not only to the French Revolution but to the quarter of a century that followed it and saw a large number of constitution-making projects founder across Europe. According to Hegel, it was the idea of the social contract that had produced not just the French Revolution but all revolutions that followed. The experience provided by 'a 25year-long mostly terrifying reality' provided the background to Hegel's renewed insistence on the pernicious consequences attending the contract idea: 'The revolutions of modern times are to be judged from it.'⁷¹ In fact, hardly any piece of political writing of the period fails to invoke these same twenty-five years, with the alleged lessons learnt wildly divergent. In Hegel's view, the period since the French Revolution should have taught everyone to abandon the contractarian notion. The 'dangers and terrors' that accompanied 'the creation of new constitutions and an actuality proceeding from thought' should be apparent to anyone.⁷²

To Hegel's alarm, however, it had become 'highly common to make constitutions'.⁷³ People all over Europe attempted the introduction of the very abstractions that had produced the Terror. In the lectures of the mid-1820s, Hegel clearly identifies 'the so-called liberals' who have experimented with constitutions based on 'abstract thought' as the target of his claim that constitutions cannot be made.⁷⁴ After all, it was exactly in this period that the very term 'liberal' started to be used as an ideological label. As a case in point, the Prussian Ernst von Bülow-Cummerow taxed Johann Friedrich Benzenberg with having incurred 'a great sin by being the first to

⁶⁹ *E*, 236 (§440).

⁷⁰ *LW*, 60.

⁷¹ *LW*, 32; *VPR*21, 632.

⁷² *LW*, 33.

⁷³ *VPR*22, 1009.

⁷⁴ *VPR*24, 1423.

try and transfer the names of liberals, ultras, etc.' into the German context with his appraisal of Chancellor Hardenberg's administration in 1821.⁷⁵ In his lectures on the philosophy of history, Hegel even treats '*liberalism*' as a definitive creed based on 'the principle of atoms, of individual wills'.⁷⁶ He declares that 'the abstraction of liberalism has thus traversed the Romanic world starting from France'.⁷⁷ Obviously, this impressive march had not been very successful, or so Hegel thought, referring to 'one to two dozen constitutions' given since the French Revolution, which 'were all flawed, more or less'.⁷⁸

Hegel thus portrays all attempts to install constitutions grounded solely in abstract principles without regard for historical circumstances as doomed to failure. Misunderstanding the organic nature of constitutions, they are bound to result in chaos. A constitution simply is 'more than a product of thought' [*Gedankending*] and cannot be derived '*a priori*', however rational it may be (§274A).⁷⁹ Instead, it grows over time and, most importantly, in accordance with a people's spirit. Just like writers who proclaimed a fundamental 'right to contract' argued that a people first had to prove themselves 'mature' enough to be able to enter a constitutional contract, so Hegel thought they had to be ready for a constitution that increased their freedom.⁸⁰ In this respect, he flatly contradicts Rousseau's notion that one could be 'forced to be free'.⁸¹ First, people had to become conscious of their right to freedom as human beings.

Even 'the great teacher of constitutional law' Napoleon had made the mistake of trying to give a constitution *a priori*.⁸² In his discontent with the prevailing political organisation in 1808, Hegel had still hoped that along with the *Code Napoléon*, 'the rest of the French or Westphalian constitution would be introduced' throughout Germany.⁸³ The latter was extensively covered in the pages of the *Bamberger Zeitung*, which Hegel edited in 'pro-Napoleonic' fashion at the time.⁸⁴ In later lectures, however, he invokes the failure of the constitution of Bayonne introduced by Napoleon in Spain in that same year (1808) to illustrate that 'a

⁷⁵ Bülow-Cummerow 1821, 13. Cf. Benzenberg 1821. On the evolution of the term 'liberal' in English, French, German and Italian, see Leonhard 2001.

⁷⁶ *VPG*, 534.

⁷⁷ *VPG*, 535. On 'the Liberal Revolutions of the 1820s in Southern Europe', see Isabella 2015.

⁷⁸ *VPR*17, 163. ⁷⁹ Hegel equally insists on this in *LW*, 114.

⁸⁰ Eschenmayer 1819, 215, 267. Cf. Berger 1819, 25.

⁸¹ Rousseau [1762a] 2004, 19 (Book I, Chapter VII).

⁸² *BI*, 185; Hegel to Niethammer, 29 August 1807 [*Der große Staatsrechtslehrer*].

⁸³ *BI*, 218; Hegel to Niethammer, 11 February 1808. ⁸⁴ Pinkard 2000, 243–45.

constitution must express the spirit of the people, its inner development'.⁸⁵ Although Hegel praises Napoleon's constitution as more rational than the Spanish one, it quite simply did not suit them. Based on abstract principle, it did not have the right kind of (organic) connection with what existed and was 'something too alien'.⁸⁶ In the lectures on the philosophy of history, 'the Napoleonic constitution' is explicitly treated as an expression of liberalism too.⁸⁷

By the mid-twenties, Hegel registered that the liberals had failed in France, Spain, Naples, Portugal, Piedmont and Ireland. His comment that they seemed to 'have gone bankrupt everywhere' seems to have been wishful thinking, though.⁸⁸ To Hegel's great consternation, liberalism was alive and kicking: in the first set of lectures based on the published *Philosophy of Right*, he found that 'one still sees such ideas disseminated far and wide'.⁸⁹ He was thus fighting an uphill battle, well aware of the contract's being the 'general idea'.⁹⁰ While contemporary writers did not usually question the legitimacy of hereditary kings as such, there were demands for the constitution to be conceived as a contract rather than a one-sided imposition by the prince. Scholarship has even identified as a 'generally shared belief' long prevailing throughout Europe 'that power, although it derived from God, was conferred upon kings by a contract with the people'.⁹¹ In the early nineteenth century specifically, most Germanophone teachers of constitutional law accepted the idea, derived from the natural law tradition, of the constitution as based on agreement and taking the form of a contract.⁹²

In fact, however, there was still much discussion rather than any straightforward agreement about the contract. One point of contention concerned the question of whether consent had to be explicit or could be

⁸⁵ VPR22, 1012. Cf. VPG, 444. The reference to Napoleon's imposition of an 'a priori' constitution is already present in the lectures of 1819/20 (VPR19, 530).

⁸⁶ VPR19, 530.

⁸⁷ VPG, 535. Hegel also refers to Napoleon's 'liberal institutions' at VPG, 533. Contemporary interest in the Spanish case is also attested, for instance, by Haller's 1820 work *Ueber die Constitution der Spanischen Cortes*. Hegel, for one, excerpted the ultraroyalist De Pradt's *De la revolution actuelle de l'Espagne, et de ses suites* of the same year. His excerpt contains a passage that seems to caricature the demand for states based on principle, not history, which is perceived to prevail throughout Europe (GW22, 50).

⁸⁸ VPR24, 1423. ⁸⁹ VPR21, 632. ⁹⁰ VPR19, 372. ⁹¹ Pagden 2002, 4.

⁹² Stolleis 1992, 98 and 123. On German natural law, see (for starters) Hochstrasser 2000 and Haakonssen 2006. Demonstrating how the genre continued into the nineteenth century, Diethelm Klippel's work provides important academic context for Hegel; see Klippel 1976, 1987, 1995, 1997 and 2012; as well as Schild 2013.

tacit.⁹³ Hegel was also not ploughing a lonely furrow altogether. Perhaps surprisingly, his declared enemy Jakob Friedrich Fries, for instance, equally insisted that it was not optional for individuals to become a member of the state. Rather, they were compelled to do so by ‘the necessity of law’: ‘From this follows immediately: *that a contract as the basis of the civil constitution is impossible and contradictory*.’⁹⁴ While this position should not be elevated into a generality, some also thought that any imposed constitution was better than none and thus privileged content over form.⁹⁵ Notwithstanding these crucial nuances, sweeping claims about the general prevalence of contractarianism reflect a basic truth that was recognised by contemporaries too. ‘In more recent times’, Hegel himself points out, ‘it has been very popular [*beliebt*] to see the state as a contract of all with all. All would enter a contract with the prince, he would do so with the subjects.’⁹⁶ Other writers too recognised this to be a ‘statement of faith’ for ‘many excellent men’.⁹⁷

Labouring to combat the triumph of contractarianism, Hegel forms a significant deviation from a virtual consensus.⁹⁸ By opposing the idea of a contract between the people and the monarch, Hegel rejected widespread demands and countered ambitions to achieve constitutions of a contractual nature. His aim in insisting on the necessity of the state for human existence was to detract from what he saw as an over-emphasis on individual caprice, in order to provide the state with a firm foundation and salvage it from the jeopardy it had recently been placed in. At the same time, Hegel wanted to accommodate the demand for liberty and sought to build it into the constitution in various ways, as we shall see throughout the following chapters.

German Delusions

Hegel had long held his opposition to contractarianism, yet it acquired a new sense of urgency in the immediate post-Napoleonic context that saw

⁹³ For instance, the author of *Einige Gedanken* 1818 advocates the former, [Krug] 1816 the latter.

⁹⁴ Fries 1803, 79.

⁹⁵ Behr 1818, 10. *Ein Wort* 1818, 196 considers a good choice of ministers more important than constitutional forms. Grimm 1995, 124 seems to universalise such sentiments.

⁹⁶ *VPR*22, 837. ⁹⁷ Hegewisch 1816, VII.

⁹⁸ A comparison of Hegel's views with those of Jeremy Bentham as a prominent contemporary anti-contractarian would be interesting but beyond the purposes of the present discussion; other similarities are discussed in Chapter 4.

struggles for the introduction of constitutions in several German states.⁹⁹ Beyond an engagement with the natural law tradition, Hegel's rejection of the contract is an inherently political position of immediate purport. By opposing the idea of a contract between the people and the monarch, he sternly warned his fellow German-speakers that one cannot simply go about 'making' constitutions divorced from historical and intellectual conditions. Hegel was well aware that the question of making the constitution, which he so vehemently dismissed, was 'the first and most important question' for many at the time.¹⁰⁰ Far from a casual remark, therefore, his rejection constituted a calculated polemic against those who wanted to see the ideas of a social contract and popular sovereignty put into practice. In effect, Hegel's rejection of contractarianism may be seen as legitimising the one-sided imposition of written constitutions.

Significantly, the demands for a '*constitutional contract*' had been successful in the case of Württemberg.¹⁰¹ Hegel could certainly not approve of the fact that Württemberg's 1819 constitution, in contrast to other early German constitutions, presented an *agreement* between the King and the Estates. He had clearly rejected such an approach to the new constitution of his home state in his *Assessment* of 1817. As explained in Chapter 1, Württemberg constituted an important test ground for all of Germany, and it is especially relevant in the context of contemporary calls for constitutional contracts. The Estates of Württemberg very clearly took issue with the form, not just the contents of the royal constitution, which in successive drafts converged more and more with the Assembly's own suggestions.¹⁰² A scholar of the next generation retrospectively judged that the advocates of the so-called good old law did not in fact want to stick to the 'empirical contents' of the old constitution but sought recognition for the contract with the people.¹⁰³ They objected to the one-sided imposition intended by the King, whose proclamation of 1815 explicitly contains the phrase 'I give a constitution to my people' and leaves no doubt that the constitution is meant to embody an expression of the royal will.¹⁰⁴

⁹⁹ Hegel's opposition to contractarianism is already present in his essay on natural law of 1802/03 (*GW4*, 477).

¹⁰⁰ *VPR17*, 162.

¹⁰¹ Huber 1967, 334. The term was also used at the time, e.g., in the Instruction Committee's 1816 *Entwurf des zu erneuernden Württembergischen Verfassungsvertrags* mentioned in *LW*, 121. The text of the Württemberg constitution of 1819 itself speaks of 'the present contract' at §205.

¹⁰² This convergence is demonstrated by [Schwab and Schott] 1817. In contrast, [Bolley] 1817 insists on irreconcilable differences. Both pamphlets formed part of Hegel's library (*K* 1220 and *K* 1221).

¹⁰³ Vischer 1863, 128. ¹⁰⁴ *Verhandlungen* 1815, 14.

Conscious of their three-hundred-year-old tradition since the 'original state-contract' had been cemented in the so-called Contract of Tübingen (1514), the Estates were certainly not going to accept such an imposition. Even vocal proponents of the royal constitution insisted that treaties must be upheld and may not simply 'be turned inside out like Danish gloves', the height of fashion at the time.¹⁰⁵ Exchanging privileges for financial and military support, 'Württemberg's Magna Charta' had clearly laid down the relation between the ruler and the people as 'a social relationship of free, rational beings'.¹⁰⁶ As nobody had consented to the King's measures, he had broken eternally valid contracts. A British observer likewise took issue especially with the fact that 'neither the States nor the People had assented, either in word or deed' to the King's actions, who had thus effected a 'lawless usurpation' and 'placed himself in the situation of an autocrat'.¹⁰⁷

From Hegel's perspective, no such consent was needed. Instead, he criticises the Estates for their 'formalism' and defends the royal efforts at constitutionalisation, praising King Friedrich for his initiative as 'the first and so far . . . almost the only one . . . to give his country such an open and liberal constitution'.¹⁰⁸ Rejecting the notion of a '*state contract*' on principle, Hegel disagrees with many of his contemporary Württembergers as well as Rousseau and Fichte.¹⁰⁹ Admittedly, the case of the Estates did not rely on natural law and has more in common with lines of argumentation that invoke tradition and an 'ancient constitution'.¹¹⁰ The point I wish to make, however, is that Hegel's principled opposition to contractarianism applies equally. While others insisted that the social contract is 'of course *not* an ordinary one', Hegel's strategy of argumentation is exactly to treat it like any other contract.¹¹¹

In this context, it is of crucial importance to recognise that Hegel identifies the same problem as inherent to both social contract theory and the historical conditions of the feudal system, where political power was treated as private property and governed by a myriad of overlapping obligations (§75A). Hegel's conviction of their commonality is demonstrated by the fact that he ascribes the same flaws to Carl Ludwig von Haller's patriarchal theory as to contract theory. Haller was the author of the influential *Restauration der Staats-Wissenschaft* (*Restoration of the Science*

¹⁰⁵ [Wangenheim] 1815, 110, 279.

¹⁰⁶ Uhland 1817, unpaginated. The term Magna Charta is imputed to the historian Ludwig Spittler (1752–1810) by Hugo 1827, 11. Hegel uses the term 'Grundgesetz', or fundamental law, in *LW*, 40.

¹⁰⁷ [Smith?] 1818, 357. ¹⁰⁸ *LW*, 61 and *passim*, 49. ¹⁰⁹ *LW*, 60.

¹¹⁰ On this topic, see now Goldie 2019. ¹¹¹ Berger 1819, 25.

of *State*), which appeared in six lengthy volumes from 1816, and was vigorously attacked by Hegel, who saw him as a champion of the feudal system.¹¹² Not dissimilar to Hegel, Haller had identified social contract theory as the root of the French Revolution and dedicated himself to its repudiation. As is evident from the virulence of Hegel's polemic against Haller's 'thoughtlessness', however, they shared not much else (§219A and §258A). Haller had turned from liberal beginnings – having even helped to draft a constitution for the republic of Bern in 1798 – into an outright enemy of all constitutionalisation and legal codification. In contrast, Hegel wanted to cancel the pernicious consequences of the attempt to force abstract principles onto reality without giving up on the revolutionary ideals and achievements.

A mere two years older than Hegel, Haller had experienced the French Revolution and its repercussions, especially in the Bernese variant, as adolescent. He quickly became disillusioned, realizing 'that this revolution effected the exact opposite of all it had intended or proclaimed, namely the destruction of all freedom and all property, instead of their increased protection'. Accordingly, he turned his back on that event that had 'flooded a whole part of the world with blood and tears', rejecting it wholesale. From the experience of the Revolution as 'an experiment . . . which nature has so terribly punished', Haller concluded that a 'restoration' of former social relations was needed.¹¹³ Enjoying great popularity at the Prussian court, his work has often since served as the name-giver for the period that followed.¹¹⁴

In Hegel's view, Haller had been led by his ambition to 'crush the head of the Jacobin serpent' to vindicate something worse yet, a return to a state of feudal relations.¹¹⁵ Fundamentally, Haller breaks down the difference between private and public, treating the relation of prince and people like any other social relationship. The public nature of the state is thus replaced with the image of a private entity, characterised by a multitude of

¹¹² Haller 1816–34. Haller (1824–75) also rendered a French translation himself. See GW22, 37–45 for Hegel's excerpts from *Restauration*, vols. I–III, dated 1819. Haller's *Restauration* has been called 'the most neglected work in the whole history of the century's social thought' (Nisbet 1978, 630); Kaposy 2017 offers the most recent analysis. For commentary on Hegel vs. Haller, see Reinhard 1955; Liedke 1958; Kämpfer 1961; Jaeschke 1986; Klenner 1989.

¹¹³ Haller [1820] 1964, VII, LXXVIIIff., VII.

¹¹⁴ The influence of Haller's work on the Prussian court is depicted by Meinecke [1908] 1962 (chapter 10) and its wider reception, promoted especially by the publicist Ludwig von Gerlach, in Berdahl 1988 (chapter 7).

¹¹⁵ Haller [1820] 1964, XXXI; cf. Genesis 3, 15. A strong religious tone permeates Haller's entire book, who described himself as 'vividly religious' (Haller [1820] 1964, XXVI).

interlocking personal obligations. Above all, it is the family that serves as the model for Haller's view of government. He claims that, historically, 'each paterfamilias was a quintessential sovereign' and that princes are 'nothing but great and free patriarchs'.¹¹⁶ Remarkably, Haller possessed only second-hand knowledge of Robert Filmer's *Patriarcha, or the Natural Power of Kings* from 1680, arguably the classic account of patriarchal government. As Haller explains, he learned about *Patriarcha* only through Algernon Sidney's response, the *Discourses Concerning Government* (posthumously published in 1698), possibly in the French translation of 1702 or a German edition from the 1790s.¹¹⁷ On this basis, Haller criticises Filmer for his narrow focus on monarchies and the divine right of kings, thinking that the patrimonial state could also take the form of a republic. At any rate, Haller in effect reduces 'so-called sovereignty' to 'nothing but the prince's . . . personal right'. Thus, he writes that 'sovereignty could be as little separated from property as the shadow from a body'.¹¹⁸

As is clear from his diatribes in the *Philosophy of Right*, Hegel was outraged by Haller's regressive postulates. From his perspective, Haller was relativising the idea of the state. By presenting the state as governed by private relations and essentially the ruler's property, he had committed the fatal moral as well as philosophical error 'to ignore that which is in and for itself *infinite* and *rational* in the state' (§258A). Hegel's characteristic strategy of refutation is to point out the commonalities of Haller's patriarchal theory and social contract theory. While Haller urges to abandon the contractarian notion of 'artificial association', as indicated in the subtitle of the *Restoration, Theory of the Social State of Nature, Opposed to the Chimera of an Artificial Civil State*, he too conceives of the state as an end to subsistence and mutual assistance.¹¹⁹ Accordingly, he is equally susceptible to Hegel's criticism of failing to recognise the state's higher nature. While objecting to the idea of one overarching social contract, Haller's theory of the state relies on an endless number of contractual bonds between individuals. In this way, he commits the same fallacy as the very champions of the social contract he wants to discredit. Both have mistakenly 'transferred the determinations of private property into a sphere

¹¹⁶ Haller [1820] 1964, XIX.

¹¹⁷ See Lurbe 2013 on what was 'Lost in [French] Translation' and Mahlberg 2021 on the German translator's de-radicalising effect on Sidney 1793.

¹¹⁸ Haller [1820] 1964, X, X, XIV.

¹¹⁹ Haller [1820] 1964, V. *Theorie des natürlich-geselligen Zustands, der Chimäre des künstlich-bürgerlichen entgegengesetzt.*

of an entirely different and higher nature' and thereby produced 'the greatest confusions in state law and in reality' (§75A).¹²⁰

Discarding the social contract as a mere thought-experiment, Haller claims that history itself confirms his own tenets. In Hegel's view, he has merely mistaken 'the sphere of the contingent for the essence of the state' (§258A). Hegel concedes that states may indeed have originated in patriarchal arrangements and private contracts historically, but that is circumstantial and irrelevant for the *idea* of the state. The most obvious example was the Holy Roman Empire, where relations between the rulers of its constituent territories and their subjects were governed by contracts. Further, the Emperor was tied to the arbitrary will and particular interests of powerful actors through so-called electoral capitulations.¹²¹ In the lectures, Hegel also mentions the history of Poland as a deterring example.¹²² In his view, such 'elective monarchy' is literally 'the worst of institutions' because it effects 'the transformation of particular state powers into private property, the weakening and loss of the state's sovereignty and thereby its inner dissolution and external destruction' (§281A). Hegel had already diagnosed these ills of 'the German constitution' at the turn of the century, and they had reached their culmination with the Old Empire's demise in 1806.

Thus, Hegel in fact talks about a very recent past when saying that the conception of state powers as private rights belongs to 'earlier periods' (§75A). In the lectures, he details how the notion of the state as the rulers' private property acquired by chance was long prevalent 'in Europe, especially in the German Empire'. In England, Hegel says, 'political right' is still 'more or less a private property', which may be sold or given away. He diagnoses precisely such lending and selling of sovereign rights as the very reason for the Holy Roman Empire's dissolution. This practice results in nothing but 'inconsequences', because 'reason' and a 'general principle' to govern politics are absent.¹²³ The pernicious consequence is an 'alternation of insurrections, acts of violence by the princes, internal wars, demise of princely individuals and dynasties, and the resulting general devastation and destruction internally and externally' (§286A).

¹²⁰ While *PR* §75 does not mention Haller by name, the corresponding notes in Hegel's personal copy do (*GW*14,2, 491). Equally, §75 in the lecture transcript from 1824/25 explicitly mentions both Haller and the *Restoration*, discussing them in some detail (*VPR*24, 1164–66).

¹²¹ For an interpretation of electoral capitulations as a form of 'proto-constitutionalism', see Burgdorf 2015, 2018.

¹²² *VPR*24, 1436. ¹²³ *VPR*24, 1165. Cf. Hegel's 1831 article on the Reform Bill.

To Hegel's relief, 'the entire contractual relation' had finally 'ceased to exist' with the achievement of sovereignty by various of the German states around 1815.¹²⁴ Both patriarchal and contract theory, however, threatened this very 'advance of the state in more recent times, that the state is an end in and for itself' rather than subject to the whims of individuals.¹²⁵ If the myriad of personal contracts under the feudal system was simply to be replaced by one contract of all with all, the fundamental problem – subjection to arbitrariness – would remain. The success of Haller's theory would produce worse results still, namely an effectual return to feudalism. While historical states used to be dependent on powerful actors, contract theory in Hegel's view rendered them dependent on the individual wills of countless individuals. In one like the other, arbitrariness was the ruling principle.

Hegel's conflation of social and feudal contracts was not unheard of at the time, and some advocates of the contract subscribed to it, too. For instance, an anonymous author, who postulated that 'reason recognises no other origin of the state as lawful', saw the contractual principle as not only underlying 'the latest constitutions' of a great number of German and European states but also inherent in their previous history.¹²⁶ One of Hegel's critics enlisted the history of England, Switzerland and Sweden precisely to refute Hegel's argument that contracts would founder without a 'praetor' or referee to enforce them.¹²⁷ It is particularly eye-opening that Hegel was not the only one who employed the strategy of equalling all kinds of contracts in order to reject them as an inadequate way of thinking about the state. An article in Friedrich Buchholz's *Journal für Deutschland, historisch-politischen Inhalts* (*Historico-Political Journal for Germany*) from 1817, most likely written by this prominent Prussian publicist himself, makes use of the exact same line of argumentation.

The article is dedicated to the question 'Can the constitution of a state be viewed in the light of a contract?', which is answered with a resounding 'no'. It corroborates Hegel's observation that the constitution of 'Germany' has 'always been viewed in the light of a contract'.¹²⁸ Revealingly, the author refers especially to the proceedings of the Württemberg Assembly as proof for the continuation of this tradition. Just like Hegel, Buchholz thinks this view is enormously misleading and should be relinquished: 'Insofar as the nature of society determines the

¹²⁴ *LW*, 60. ¹²⁵ *VPR*22, 839. ¹²⁶ [Pölitz?]1819, 84, 85.

¹²⁷ [Zahn] 1818, 66. This criticism is aimed at *LW*, 56 and 60. Cf. *PR* §333.

¹²⁸ [Buchholz] 1817, 122.

character of the organic or constitutional laws: how can one assume that they could be the subject of a negotiation or a contract?'¹²⁹ With recourse to the famous maxim '*adde unum, populus est; deme unum, turba erit*', Buchholz argues that Augustine 'overthrows the entire doctrine of a constitutional contract by claiming that a people is always turned into a raw, disorganised crowd without [the monarch]'.¹³⁰

This is of course precisely the argumentative strategy pursued by Hegel in his denial of the possibility of making constitutions, when he argues that the latter 'presupposes that no constitution and therefore a merely atomistic *crowd* of individuals exists' (§273A).¹³¹ In order to reject the 'confused thought[s]' of popular sovereignty, Hegel argues that '*the* people, taken *without* its monarch and the *articulation* of the whole which is necessarily and immediately connected to it [i.e., the monarch's existence], is the formless mass which is no longer a state' (§279A). Even the resemblance of Hegel's wording to Buchholz's is uncanny when he further describes the actions of such a crowd or 'formless mass' as 'elementary, irrational, wild and terrible' (§303A). In the lectures, he also speaks of a 'raw crowd'.¹³² For Hegel as for Buchholz, the existence of a monarch is the '*sine qua non*' of a people properly so called.¹³³

Despite such striking parallels, there seems to be no evidence of any direct connection between Buchholz and Hegel, who both lived in Berlin from 1818 until Hegel's death in 1831 and must have been well aware of each other's work. An indication that contemporaries saw some similarities between them is perhaps given by a note from the chronicler Karl August Varnhagen's diary from 1827. There, he records that both Hegel and Buchholz were 'tremendously hated' by the state theorist Friedrich Ancillon, who was advisor to the King of Prussia, teacher of the Crown Prince, and a declared enemy of Hardenberg's reform efforts.¹³⁴ His works *Ueber Souveränität und Staats-Verfassungen* (*On Sovereignty and State Constitutions*, 1816), *Ueber die Staatswissenschaft* (*On the Science of State*,

¹²⁹ [Buchholz] 1817, 124.

¹³⁰ [Buchholz] 1817, 125. The quotation from Augustine is for instance also given in Schlözer's well-known 1793 book on *General State Law and Theory of State Constitution* (ibid., 136). It is described as a 'famous maxim' by Aretin 1824, 151.

¹³¹ I do not follow Knox's and Nisbet's translation of *Haufen* as 'aggregate' here, because I think it misses the connotation of a 'mob', which the German word used by both Buchholz and Hegel carries. The term *Aggregat* was available to Hegel too; he uses it for instance at *VPR*7, 75 and, right next to *Haufen*, in *LW*, 44.

¹³² *VPR*19, 528. ¹³³ [Buchholz] 1817, 125.

¹³⁴ *BZ*, 345 (dated 14 August 1827). On the discussions and factions within the Prussian administration at the time, see Koselleck's classic account from 1967 and Hofmeister-Hunger's 1990 standard work.

1820) and *Ueber den Geist der Staatsverfassungen und dessen Einfluß auf die Gesetzgebung* (*On the Spirit of State Constitutions and Its Impact on Legislation*, 1825) reveal him as a staunch opponent of any form of representative constitution, the cause that may be said to join Hegel and Buchholz.

Hegel's view of the monarch as the head of the body politic, as it were, illustrates his ambiguous relation to social contract theory. His references to a mere crowd or mass of people in the absence of a state and a monarch are strongly reminiscent of the Hobbesian multitude, even though he parodies Thomas Hobbes's account of the state of nature as a war of all against all when he describes civil society in precisely those terms in §289A.¹³⁵ Most conspicuously, Hegel follows the natural law tradition in describing the state as a 'so-called *moral* person' (§279A). It had been Hobbes's innovation, who describes the state as 'an Artificiall Man' on the first page of *Leviathan*, to propound what Quentin Skinner has called a 'fictional theory' of the state.¹³⁶ The latter was most influentially transmitted to the European continent through the work of Samuel Pufendorf, who described the state as a *persona moralis* in 1672, and passed for established wisdom since the mid-eighteenth century.¹³⁷ In the case of Hegel, his reference to 'society, community, family' as examples of moral persons also seems to indicate a connection with a tradition of thinking about corporations as fictional persons that even predates Hobbes (§279A).¹³⁸ In the lectures, he adds 'universities' and, as rector of the university of Berlin a few years later, he would act as the representative of such a moral person himself.¹³⁹

Like Hobbes, Hegel conceives of sovereignty as a property of the state and subscribes to the view, expressed neatly by Benzenberg, that sovereignty 'inhabits the state like the soul inhabits the body'.¹⁴⁰ Less permissive than even the author of *Leviathan*, however, he leaves no room for the possibility of any other form of (rational) state than (constitutional) monarchy by insisting that sovereignty must necessarily be personated by one individual: 'The personality of the state is only actual as a *person*, the

¹³⁵ Cf. Hobbes 1651, chapter 13; Hobbes 1696, chapter 1.12 (Hegel owned this edition of *De Cive*: K 372).

¹³⁶ Skinner 2009, 348. See also Skinner 2002, vol. 3, 177–208 on 'Hobbes and the Purely Artificial Person of the State'.

¹³⁷ See Skinner 2009, 349ff. and, for an extended discussion, Holland 2017.

¹³⁸ Skinner 2009, 349 mentions Hobbes's 'debt to a body of Continental treatises' on this topic. Otto von Gierke has especially engaged with it in his influential work on the history of group personality (1868–1914).

¹³⁹ VPR24, 1431. ¹⁴⁰ Benzenberg 1816, 347.

monarch.' In this way, Hegel precludes the very possibility of thinking of sovereignty 'in *opposition to the sovereignty which exists in the monarch*'. This was exactly the 'usual sense in which one has begun to speak of popular sovereignty in recent times', namely in the wake of Rousseau's *Social Contract*, which Hegel rejects as an absurdity indeed (§279A).¹⁴¹ A people without a monarch cannot constitute a state because it is only through the individuality of the monarch that 'a people becomes *one people*'.¹⁴² The monarch thus provides a society and its members with organic unity. As 'representative of his people, [the] whole lives in him and acts from him'.¹⁴³ For Hegel, the 'substantial unity' of 'the particular powers and functions' of the state represents 'the basic determination of the political state' and lies at the very heart of his conception of sovereignty (§276). Just as they demonstrate a lack of differentiation of powers, feudal states are missing such unity as they are characterised by struggle between various powerholders and the private property of state offices. Consequently, they entirely lack any '*sovereignty of the state*' in the proper sense (§278). For Hegel, only the constitutional state is truly sovereign, and it cannot be founded on contract.

Based on an organic model of the constitution, Hegel thus presents a compelling argument against the contract. Yet the harsh opposition he sets up between the higher nature of the state and the idea of the contract may also be questioned. Perhaps the idea that the state relies on the consent of individuals does not necessarily have to break with the organicist conception of the constitution, as Hegel argues. To start with, Rousseau himself seems to have envisioned an ethical community rather than a purely contractual, that is, instrumental state.¹⁴⁴ It is also telling that Hegel mentions Rousseau and Fichte but not Immanuel Kant, to whom his critique of contractarianism seems to apply least because Kant's account is not voluntarist.¹⁴⁵ For Kant as well as Hegel, it is not optional to become a member of state but an individual duty. Just like the applicability of Hegel's critique to social contract theory may be questioned, it does not apply to all endeavours to ground existing states on the basis of the contract. For the Württemberg advocates of the so-called good old law too, the contract signified far more than 'the hollow, formalistic concept

¹⁴¹ Tellingly, Hegel had excerpted from chapter XVII of Molleville's 1801 *Histoire de la révolution de France*, which is entitled 'Souveraineté du peuple; absurdité; ses conséquences' (GW22, 52–53).

¹⁴² VPR18, 315. ¹⁴³ E, 489. ¹⁴⁴ Kersting 1990, 932.

¹⁴⁵ Kersting 1990, 941; Patten 1999, 108f. Patten also suggests that 'Hegel generally paints an excessively voluntarist picture of contractarianism, which fails to acknowledge any rationalist dimension in contractarian thought' (112).

which Hegel opposes'.¹⁴⁶ Friedrich Theodor Vischer, who belonged to the generation following Hegel's own, demonstrates this in the case of Ludwig Uhland, poet and prominent spokesman of the good old law faction, and boldly questions the incommensurability of Hegel's conception of the state as a 'necessity of reason' with the idea of a contract between the prince and the people.¹⁴⁷

In fact, some considered them entirely compatible at the very time Hegel was making his intervention in the constitutional debate. The Kiel professor and state councillor Erich Berger, for instance, commended Hegel's portrayal of the people and government as 'an essential and original *unity*' in the same breath as he embraced the idea of the social contract.¹⁴⁸ Berger exactly denies that the 'basic civil contract' possesses the same properties as any other contract. The contract of all with all, he says, is 'of course *not* an ordinary one'; it is of an 'entirely different and higher nature'.¹⁴⁹ One is reminded of Edmund Burke's notion of a 'partnership' across generations here, with which many German intellectuals at the time were well acquainted, especially through Friedrich Gentz's (heavily edited) 1793 translation of the *Reflections on the Revolution in France*.¹⁵⁰ This only helps to reveal the strongly polemic dimension of Hegel's opposition to the contract. The great contrast Hegel sets up between the idea of the contract and a constitution's organic origins was by no means inevitable. Rather, it was a calculated argumentative move aimed at discrediting a certain kind of state-building common at the time.

Modern Lawgivers

As concerns the effect of Hegel's agitation against the notion of a constitutional contract, the above-mentioned article by Friedrich Buchholz is instructive. Sharing essentially the same argument, he does not mince matters about its effect. Buchholz claims that the case of Württemberg has conclusively demonstrated that constitutions are no matter for negotiation and contract and that other German states must draw the consequences. To his mind, this clearly means that 'constitutions can only be imposed'.¹⁵¹ This is exactly the position Hegel takes, even in the very case

¹⁴⁶ Vischer 1863, 123. Cf. *LW*, 61 and *passim*.

¹⁴⁷ Vischer 1863, 123.

¹⁴⁸ Berger 1819, 26.

¹⁴⁹ Berger 1819, 26, 25, 26.

¹⁵⁰ Burke [1790] 2014, 101. Suter 1971 explores differences and similarities between Burke and Hegel; Maliks 2021 argues 'Hegel's Debt to the German Burkeans' in his view of the French Revolution. On Gentz's adaptation of Burke's *Reflections*, see Green 2014, 2017.

¹⁵¹ [Buchholz] 1817, 127.

of Württemberg itself. By denying the contract, Hegel effectively legitimised the one-sided imposition of constitutions. Thus, there are limits to his organicism. It does not turn into historicism as his views of feudal contracts have already amply indicated; he reserves space for man-made change in the scheme of history. While he rejected the 'liberal' project of installing constitutions a priori, Hegel encouraged the introduction of written constitutions. What allows Hegel to present royal imposition as congruent with the organic origin of constitutions is its interpretation as a mere constitutional change, and perhaps it is helpful to distinguish between the concept of the organic constitution and its formalisation here. As I will show, Hegel clearly shares the view that 'the introduction of a [written] constitution appears merely as a constitutional amendment'.¹⁵² In this respect, considerable affinity exists between Hegel's constitutionalist stance and his position on the codification of civil law, and an explication of the latter will throw light on the former.

In sum, Hegel is a strong advocate for the codification of law. He agrees that a legal code will never be perfect and completely determinate, yet the law must be spelled out and publicly known. This position on legal codification carries significant implications for Hegel's stance on the question of a written constitution. Hegel warns unambiguously against abstractions, yet he abhors the conclusions drawn by people like Haller, who opposed any and all attempts at codification and constitutionalisation. While 'so-called *paper constitutions*' were frequently ridiculed,¹⁵³ Hegel definitely supported their introduction. In the footnote to §258 of the *Philosophy of Right*, he defends documents like the Magna Carta, the Bill of Rights and the Prussian General Legal Code from Haller's criticism. Hegel emphasises 'how infinitely important, divine it is that the duties of the state and the rights of the citizens, like the rights of the state and the duties of the citizens,¹⁵⁴ are *legally* determined' (§258, n.). The position that potential error and incompleteness should not keep humans from trying equally sets him apart from Friedrich Carl von Savigny, the figurehead of the so-called Historical School of Law. The latter was led by his organicist commitments to reject the enterprise of introducing law codes, and he did so with great emphasis in his *Vom Beruf unsrer Zeit für Gesetzgebung und*

¹⁵² Grimm 1990, 873. ¹⁵³ Krug 1816, 88.

¹⁵⁴ This reverse is missing from Nisbet's translation in Hegel 1991.

Rechtswissenschaft (Of the Vocation of Our Age for Legislation and Jurisprudence).¹⁵⁵

In Savigny's view, there is no need for codification as law is alive in the consciousness of a people, developing organically over time. A scholar of Roman law, he holds on to the customary legal system as passed on through history and denies his age the capacity to compile a satisfactory code of law.¹⁵⁶ He scrutinises and rejects the three great contemporary examples of legal codes, namely the Prussian (1794) and the Austrian (1812) in addition to the French Civil Code. In contrast, Hegel hailed the *Code civil* and the Prussian Civil Code as great achievements on the way to the abolition of feudalism and the establishment of personal liberty.¹⁵⁷ While the Prussian attempt at codification of civil, penal and public law in a single statute book was singular in its comprehensiveness, the code of law introduced under Napoleon was to prove even more influential.

Yet the so-called Napoleonic Code was perceived by many to be an instrument of foreign domination, and scholarship confirms the reality of this dimension too.¹⁵⁸ Tellingly, the Code was among the books symbolically burned at the Wartburg Festival in 1817. It was most vigorously rejected as a contrivance of French despotism in August Wilhelm Rehberg's *Ueber den Code Napoleon und dessen Einführung in Deutschland (On the Code Napoleon and Its Introduction in Germany)* of 1814. In a critical review, the law professor Anton Friedrich Justus Thibaut agreed on many shortcomings of the Code but commended its clarity in contrast to the hotchpotch of laws prevailing in Germany.¹⁵⁹ The conclusion he drew in his piece *Ueber die Notwendigkeit eines allgemeinen bürgerlichen Rechts für Deutschland (On the Necessity of a General Civil Law for Germany)* was to demand the introduction of a common code of law for all of the German states.¹⁶⁰ With Savigny's eloquent rebuttal making its appearance a little later, the issue caused a considerable stir. Numerous authors joined what came to be known as the codification controversy (*Kodifikationsstreit*).¹⁶¹ Carrying on for several years, it eventually turned in

¹⁵⁵ Savigny 1814 (in Hegel's library as *K* 1191). An English translation appeared in 1831. Beiser 2011, 237 (ebook) refers to it as 'the manifesto of the historical school'.

¹⁵⁶ He does so literally at Savigny 1814, 49: 'I deny our ability to create a laudable code of law.'

¹⁵⁷ *VPR*19, 476; *BI*, 218; *VPR*24, 1165; *GW*14.2, 491. ¹⁵⁸ E.g., Fehrenbach 1978, 11–12.

¹⁵⁹ [Thibaut] 1814.

¹⁶⁰ Thibaut 1814. Listed as item *K* 1207 in the auction catalogue of Hegel's library.

¹⁶¹ For instance, Gönner 1814; Schmid 1814; Pfeiffer 1815; Feuerbach 1816. Most of these were reviewed by Thibaut, Savigny or both.

Savigny's favour and has also been described as 'the hour of birth' of the so-called Historical School of Law.¹⁶²

While Savigny became Hegel's colleague at Berlin, Thibaut had been so at Jena and Heidelberg, and Hegel described himself as 'on friendly, almost intimate terms' with him.¹⁶³ They co-edited the *Heidelberger Jahrbücher*, shared a passion for music and one contemporary claimed to observe the impact of Hegel's treatment of natural law on Thibaut.¹⁶⁴ Their views on codification converged too, and in the *Philosophy of Right*, Hegel explicitly rejects Savigny's position, insisting that any civilised people will need a collection of laws. Without mentioning his name, Hegel directly attacks Savigny when he calls it 'one of the greatest insults' 'to deny a civilised nation or the legal profession within it the ability to make a code of law'.¹⁶⁵ With respect to Hegel's constitutional views, it is crucial to register the clarification he makes in this context, namely that *making* does not mean 'to create a system of laws with a *new content*' but to comprehend their 'present content' in thinking (§211A). Naturally, such a code of law will be 'characterised by *formlessness*, indeterminacy and incompleteness' (§211A), yet 'it is irrational to argue against the demands for a code of law for this reason'.¹⁶⁶ Hegel even admits that, sometimes, legislation will be unjust (§3A, §212) but holds fast to the view that any legal code is better than none. In one of the lectures, he invokes a common saying to that effect, namely that 'bad weather is always better than no weather at all'.¹⁶⁷

The reason why Hegel thinks that having an established code of law is of such tremendous importance, simply put, is that people need to know the laws under which they live. Hegel strongly echoes Thibaut in his advocacy for a law of the commoner rather than the jurist, for instance, when he says

¹⁶² Hattenhauer 1973, 46. See Savigny's 1817 article in his newly founded 'journal for historical jurisprudence' and Schlichtegroll 1818. On the Historical School of Law, see Böckenförde 1976; Klenner 1989; Beiser 2011, chapter 5; and Haferkamp 2018. On the clash between a 'philosophical' and 'historical' school of law, see also Rückert 2002 and Kletzer 2007. Hegel's follower Eduard Gans, also a student of Thibaut's, locked horns with Savigny, e.g., in Gans 1827, a devastating review of the 1826 volume of Savigny's *Geschichte des Römischen Rechts (History of Roman Law)* for the *Jahrbücher für wissenschaftliche Kritik (Yearbooks for Scientific Critique)*. The two had a history, with Savigny obstructing Gans's admission to Berlin university's faculty of law (whose dean Gans would later become), which was difficult to gain on account of his Jewishness; see Braun 1985; Rosenberg 2000, 52–58; Pinkard 2000, 531–34.

¹⁶³ *BII*, 154; Hegel to Frommann, 19 April/31 May 1817 [*vertraulich*].

¹⁶⁴ *BZ*, 156, 168 (Ferdinand Walter in 1817).

¹⁶⁵ In allusion to Savigny's 1814 title, Gans explicitly added a reference to 'the vocation for legislation' in *PR* §211Z.

¹⁶⁶ *VPR*24, 1349. ¹⁶⁷ *VPR*19, 476.

that 'a native true code of law pertains to publicity'.¹⁶⁸ In accordance with the 'right of self-consciousness' or subjective freedom, we learn in §215, laws must be 'made *universally known*' in order to be binding (cf. §210). The tradition of Roman law does exactly the opposite by 'alienating law from subjective consciousness'¹⁶⁹ and reserving knowledge of the law for specialists, which Hegel considers to be an 'injustice' (§215A). 'Just as little as one needs to be a shoemaker to know whether one's shoes fit', he explains, one should not need to be a jurist in order to know the laws.¹⁷⁰ A clear and intelligible code of law is required to do justice to the rights of modern persons, and it is because of their contribution to this end that Hegel commends Justinian's *Digest* and the Prussian *Landrecht* of 1794 as not only a benefaction but indeed 'a great *act of justice*' (§215A). Indeed, citizens have a positive duty to know the law.¹⁷¹

Hegel repeats the charge at Savigny in the remark on §216, where he rejects the demand of completeness in a code of law as 'a *German disease*' and cites the saying, propagated by Voltaire, '*Le plus grand ennemi du Bien c'est le Meilleur [sic]*' (the greatest enemy of the good is the better) as an 'expression of true common sense'. In the lectures, he uses further imagery to discredit the concern with completeness in a legal code, pointing out how 'foolish' it would be not to 'plant a tree just because it might produce new branches'.¹⁷² Of course, Hegel thinks, laws must go with the times and continually undergo change, yet that must not deter from writing them down. He clearly considers perfectionism out of place with a code of law and explicitly dismisses the continuous development of law and its necessary adaptation to particular cases as a reason against 'the right to a complete code of law' (§216). The approach Hegel takes to constitutions is much the same.

Hegel encouraged the introduction of a written constitution especially vocally in his home state Württemberg, which constituted in his view a flagrant example of a constitution that had become outdated and represented nothing but a '*mouldy concept* of constitution'.¹⁷³ The unique historical opportunity Hegel saw after 1814 is that for the first time in history, states may be rationally organised by moving beyond contractual foundations. Louis XVIII had already seized the moment by issuing the *Charte constitutionnelle*, and Hegel urges the King of Württemberg to

¹⁶⁸ VPR21, 743. Cf. Thibaut 1814, 26: 'a strong native code of law [is] the common property of all'.

¹⁶⁹ VPR17, 133. ¹⁷⁰ VPR24, 1350 –PR §125Z. ¹⁷¹ VPR21, 597.

¹⁷² Cited according to Nisbet's translation of PR §216Z; the line stems from VPR22, 977.

¹⁷³ LW, 78.

equally 'give a constitution made from one piece'.¹⁷⁴ The contrast he produces to existing conditions is staggering and his description of the latter reminiscent of the produce of customary law. In the *Assessment* of 1817, Hegel colourfully likens the old Württemberg constitution to a house that has been refurbished and enlarged time and again.¹⁷⁵ Referring to 'the building of the state', which is subject to constant enlargement and renovation as well as the threat of collapse, Hegel draws on a familiar metaphor employed by many writers at the time.¹⁷⁶ His own self-declared aim in the *Philosophy of Right* is to elucidate 'the architectonics of [the state's] rationality'.¹⁷⁷ The old constitution of Württemberg, according to Hegel's portrayal, was anything but an image of reason, characterised instead by the chronic incongruity and instability that comes with constant tinkering without an overall plan. Ironically, Hegel recommends the collection of constitutional documents compiled by his friend-turned-enemy Heinrich Paulus for illustration of just how anachronistic and unintelligible for the people this old constitution was.¹⁷⁸ The ramshackle nature of Württemberg's constitution was already implicated in Hegel's registration of the widespread 'feeling that the public building, as it is, is unsustainable' at the turn of the century.¹⁷⁹ Now the time for change had finally come, and Hegel encouraged its active pursuit by the King.

The invocation of ancient legislators as exemplary is instructive in this context. Recommending the royal constitutional draft for Württemberg in 1817, Hegel refers to quasi-historical examples of constitutions drawn up single-handedly by lawgivers such as Solon of Athens, legendary Lycurgus of Sparta, and Moses.¹⁸⁰ This set of characters, well-known to contemporaries with a humanist education, was frequently enlisted to illustrate the idea of a benign lawgiver. An example is provided by the Württemberg minister Karl August von Wangenheim, a staunch advocate of the royal constitution, who augments the list with Jesus, considered 'the Christians' legislator', for instance by Voltaire.¹⁸¹ Buchholz, in the above-mentioned article against contractarianism, refers to the ancient legislators Moses,

¹⁷⁴ LW, 32. ¹⁷⁵ LW, 32, 55, 79.

¹⁷⁶ LW, 34. Cf., for instance, Hegewisch 1816, IV and XXIV; *Regent und Volk* 1818, 2; *Ein Wort* 1818, 193.

¹⁷⁷ PR, preface, 10.

¹⁷⁸ LW, 55. The work in question is Paulus 1816. I have addressed Hegel's relation with Paulus in Buchetmann 2020a.

¹⁷⁹ GW2, 103.

¹⁸⁰ LW, 77–78. In the lectures of the same year, Hegel includes Theseus instead of Lycurgus; VPR17, 163.

¹⁸¹ [Wangenheim] 1815, 76; Voltaire [1789] 2015, 150.

Lycurgus, Solon and Numa too, arguing that a single person must give the law.¹⁸² Hegel shares the view that constitutions as well as legal codes must be implemented from above and the historical origins of both states and jurisdictions are irrelevant. He maintains that the impetus of a ruler like Friedrich II or Napoleon is needed to complete a code of law – ‘the jurists alone would not get it done’.¹⁸³ Equally, what was needed with respect to the constitution was for the rulers of the newly established German states to follow the example of (quasi-)historical lawgivers.

As with a code of law, Hegel urges that imposed constitutions should be accepted even at the risk of not being flawless. In defence of the 1814 *Charte constitutionnelle*, he applies the same proverb he used in support of codification: ‘The better is the worse here . . . one rather has to leave what is bad in the constitution, for the sake of the form of immutability’.¹⁸⁴ Rather than unrealistically aiming at perfection, Hegel advocates the laying of a firm foundation for the rule of law. The great advantage of constitutions formally ‘given’ by the monarch, in contrast to contractual agreements, seemed to lie in the preservation of their higher-order nature and the bestowal of authority. At the same time, Hegel’s position greatly contrasts with the notion of an immutable or eternally valid ‘*original contract*’, which Buchholz observes to have ‘come alive again now more than ever’.¹⁸⁵ It was defended alike by the Württemberg advocates of the ‘good old law’ and social contract theorists like Fichte. The latter explicitly wanted the constitution to be declared ‘immutable and valid for eternity’ in the ‘civil contract’, so that it may only be changed with the explicit consent of all individual members of state.¹⁸⁶ In contrast, Hegel urges his students to ‘abandon the fear that bad constitutions might be made’ exactly because they are never set in stone and will always continue to develop and change.¹⁸⁷

For instance, the royal constitution for Württemberg at bottom presents only the groundwork for further legislation and governance. In this process, the people’s representatives would play an important role, for ‘it is chiefly the convention of an Assembly of Estates, whose operation is a continuous, calm development of [the constitution]’.¹⁸⁸ In this way, Hegel’s organicist conception of the constitution mitigates concerns about the formalisation of constitutions by affirming that they are never beyond

¹⁸² [Buchholz] 1817, 128.

¹⁸³ *VPR*19, 476.

¹⁸⁴ *VPR*17, 164.

¹⁸⁵ [Buchholz] 1817, 133.

¹⁸⁶ Fichte 1796, 225 (Hegel’s library held two copies: *K* 101 and *K* 1085).

¹⁸⁷ *VPR*17, 165.

¹⁸⁸ *LW*, 121.

change. The argument that ‘the constitution should *not* be regarded *as something made*’ (§273A) relativises any constitutional project by presenting it as a mere constitutional amendment. All human efforts are thus relegated to the status of piecemeal changes to the ‘eternal basis’ of the organic constitution.¹⁸⁹ To Hegel, a written constitution simultaneously is an invaluable asset and no more than the expression of the current condition of the organic constitution.

Once more, the invocation of ancient legislators is illuminating here. Hegel’s characterisation of the initiator of the Roman *Digest* Justinian as ‘not a lawgiver, but [an] organiser of laws’ is especially revealing.¹⁹⁰ It illustrates the view that a legal code does not establish new laws but rather puts existing laws down in writing. Crucially, the same applies to constitutions, as Hegel makes the parallel explicit in the definitive version of the *Encyclopedia* from 1830: due to the ‘inseparability’ of a constitution from the people’s spirit, ‘what is called *making* a constitution has never occurred in history, just as little as the *making* of a code of law’.¹⁹¹ In this respect, Hegel agrees with writers commonly identified as liberals in the literature. For instance, the Rhenish publicist Johann Friedrich Benzenberg insists that ‘the constitution must already be present before it is written’.¹⁹² Equally, the Kiel professor and publicist Friedrich Christoph Dahlmann opines in his 1815 article entitled ‘A Word on Constitution’ that ‘actually no good constitution can be *given* in the strict sense’.¹⁹³

Dahlmann’s reference to Lycurgus and company entails the important observation that none of the ancient legislators actually *gave* a constitution in the strict sense: ‘they created nothing from scratch’ and their constitutions were ‘not like a self-conceived work’.¹⁹⁴ This clarification applies equally for Hegel, who echoes Dahlmann in saying that not even the ancient heroes did ‘give the constitution all at once’. In fact, ‘it has never happened that a people has been given a constitution’.¹⁹⁵ According to Hegel’s organic conception, neither a code of law nor a constitution is simply made from scratch but presents only the formalisation of existing principles and must correspond with a people’s spirit. As Hegel puts it in the lectures of 1822/23, ‘the existent is thus always determined, *nothing*

¹⁸⁹ VPR17, 163. ¹⁹⁰ VPR22, 976 [*Ordner der Gesetze*]. ¹⁹¹ GW20, 513 (§540A).

¹⁹² Benzenberg 1815, 26. ¹⁹³ Dahlmann 1815, 299. ¹⁹⁴ Dahlmann 1815, 299.

¹⁹⁵ VPR24, 1422. While I have not found any direct links between Hegel and Dahlmann, there are several indirect ones. For instance, Carl Theodor Welcker was one of Dahlmann’s co-editors of the *Kieler Blätter* in 1814–16 and Hegel’s colleague at the University of Heidelberg in 1816–18; he recommended Hegel to Dahlmann as ‘an excellent lecturer’ (*BZ*, 141; 19 January 1817). Later, Hegel’s son Carl befriended Dahlmann (*Kreis* 2012, 32–33 and 98).

new, *nothing* unheard-of'.¹⁹⁶ Instead of advancing something completely new, a written constitution only formalises what is already in existence. For this reason, Hegel considered it 'an empty demand that teachers of positive law should make a finished code of law, or statesmen a constitution that is complete'.¹⁹⁷ Neither will ever be final but always remain subject to change. Yet this view by no means prevented its holders from advocating, even enthusiastically, the introduction of written constitutions. These would simply provide the basis for further constitutional and legal development.

Even on this more limited understanding of giving or making a constitution as merely effecting a constitutional amendment, Hegel objects to the idea of popular involvement. In the Württemberg context, he drastically proclaims that 'nobody can have less aptitude for making a constitution than what may be called the people, or than an Assembly of its Estates'.¹⁹⁸ This is a clear refusal of the conception of the people as *pouvoir constituant*, famously advanced by the Abbé Sieyès during the French Revolution.¹⁹⁹ The problem, which Hegel was far from the only one to be concerned about, is that not nearly everybody is conscious of the people's spirit and able to realise what kind of constitution it requires. In fact, he claims, 'the people' refers precisely to 'that part [of the state] which *does not know what it wants*' (§301A). Accordingly, they and their opinions have no place in the arrangement of constitutional matters. These, Hegel concludes, are best left to 'the wisest' who perceive the people's '*true and actual will*'.²⁰⁰ Containing 'truth and endless error' (§317A), public opinion must ultimately be ignored if anything 'great and rational' is to be achieved (§318). So-called great men have supposedly always done so. Hegel recognises the demand for popular scrutiny and validation of the constitution in accordance 'with [the people's] will and knowledge' as 'absolutely just' but insists that it has always been 'individuals' who formalised a constitution.²⁰¹ What it takes is one individual who truly

¹⁹⁶ VPR22, 1012. ¹⁹⁷ VPR24, 1058. ¹⁹⁸ LW, 78.

¹⁹⁹ Sieyès 1789. Hegel owned a 1796 collection of Sieyès's writings that contained this piece (K 1146). For an examination of affinities between their politics, see Planty-Bonjour 1986. Nakhimovsky 2011, 8 claims that an intense interest in Sieyès (along with Rousseau and Kant) 'long remained a fairly common feature of German-language histories of natural law and treatises in political science'. Recently, scholars have claimed that 'Sieyès's theory of constituent power is not, as has been argued, an expression of popular sovereignty' (Eggers 2018, 354) and should rather be seen as 'an alternative way of framing the principle of popular power' (Rubinelli 2020, 33). On *Popular Sovereignty in Historical Perspective*, see Bourke and Skinner 2016. For a recent English translation of Sieyès's essay with an introduction by Michael Sonenscher, see Sieyès 2003.

²⁰⁰ LW, 76. Hegel's ambiguous portrayal of public opinion is discussed in Chapter 5.

²⁰¹ VPR22, 1011.

discerns the people's spirit and formulates the constitution accordingly – like the ancient lawgivers, or like Louis XVIII of France, whose *Charte* of 1814 'incorporated all liberal ideas which the spirit of the people had developed since the revolution'.²⁰²

Hegel's description of the *Charte* as an expression of 'liberal ideas', in the sense of promoting liberty, is revealing.²⁰³ He equally defends the royal efforts at constitutionalisation in Württemberg by praising King Friedrich for his initiative as 'the first and so far . . . almost the only one . . . to give his country such an open and liberal constitution'.²⁰⁴ This trope was not uncommon among contemporary authors, one of whom, for instance, praised the Russian Emperor Alexander for giving Poland a 'new, modern [*zeitgemäße*] constitution', which introduced '*liberal institutions*'.²⁰⁵ For Hegel, it was crucial that the demands for freedom instituted by monarchs were rooted in the spirit of the people, so that the resulting constitution would be organically connected with what already existed (§274). While he opposed the way of constitutionalisation pursued by those who came to be called liberals, he in fact saw the King (and himself) as pursuing the revolutionary ideals but by other, namely 'constitutional means' (§273A), without dissolution of states and without recourse to popular sovereignty.

Hegel's opposition to the contract entails a rejection of revolutionary attempts to overhaul existing states at the same time as it encourages the imposition of royal constitutions. The fact that Hegel both insisted that it was impossible to 'make' a constitution and supported the introduction of new constitutions in the post-Napoleonic period underlines the polemical stakes of his argument. What allowed him to simultaneously hold both positions was his interpretation of constitutional change and what may be described as a distinction between a state's organic constitution and a written constitution. In effect, Hegel thus rejected 'liberal' attempts to impose constitutions based on abstract principles by revolutionary means but supported constitutional change by what he considered to be constitutional means. It is also instructive that the target for which Hegel reserves some of his most virulent polemics, Haller, is someone who opposed both codification and constitutionalisation on principle.

While Hegel condemned the failed revolutionary constitutions of France, Italy and Spain, he applauded those introduced by the Kings of France and Württemberg. What he really opposed, then, were attempts

²⁰² *VPR17*, 163.

²⁰³ *VPR17*, 163. Hegel uses the word in the same sense in *PR*, preface, 15 and §270A.

²⁰⁴ *LW*, 49. ²⁰⁵ [Pölitz?] 1819, 84.

to put into practice notions of popular sovereignty and contract theory, against which he upheld the importance of a constitution's accordance with the people's spirit. Emphasising the value of organically grown communities, Hegel effectively wanted to achieve liberty without liberalism. His organicist position allows for change and progress, constant movement and development, and thereby contradicts traditionalism. Hegel's enduring commitment to the value of freedom, and the tension between particularity and universality, is also eminently evident in his philosophy of history, to which we turn to conclude this chapter.

Freedom in England and World History

Famously, Hegel declared that 'world history is the progress in the consciousness of freedom'.²⁰⁶ The latter serves as the motor or driving principle of history and, as the epigraph of this chapter recalls, manifests itself in a state's constitution. Reminiscent of eighteenth-century discussions of stadial history, world history as encountered in the *Philosophy of Right* and the subsequent *Lectures on the Philosophy of History* is structured according to four 'world-historical realms'. Each of these represents 'a particular stage of consciousness' (§352) and is characterised by a dominant form of constitution, namely the Orient by despotism, Greece by democracy, Rome by aristocracy in opposition to democracy and the Germanic realm by monarchy.²⁰⁷ The last of these presents, for Hegel, the culmination of history: 'the reconciliation of the objective truth and freedom which have appeared within self-consciousness and subjectivity' is realised in 'the Nordic principle of the *Germanic peoples*' (§358). Importantly, Hegel's 'Germanic realm' comprises far more than merely the German-speaking world and roughly seems to correspond to modern Europe in Hegel's own time.²⁰⁸ It is here that subjective freedom is fully realised and the state is developed into 'the image and actuality of reason' (§360) in the form of constitutional monarchy.

²⁰⁶ *VP*G, 32; cf. *PR* §342. For references to discussions of freedom as the central concern of Hegel's thought, see Introduction, n. 81. Thiele 2008 briefly explores Hegel's 'world history of constitutional law'.

²⁰⁷ *VPR*24, 1478. Realms are explicitly matched with constitutions in *VPR*17, 219 and *VPR*18, 325.

²⁰⁸ Cf., e.g., Fichte's account of 'The principal difference between the Germans and the other peoples of Germanic descent' (Fichte 1808/2013, Fourth Address). Moore's 2008 translation of *Germanisch* as 'Teutonic' is misleading.

In identifying freedom with the constitutions of modern Europe, Hegel explicitly refers to a contemporary work that puts forward the same view. In Peter Feddersen Stuhr's *Der Untergang der Naturstaaten* (*The Downfall of Natural States*) of 1812, 'the principle of subjectivity and self-conscious freedom has likewise been demonstrated to lie in the Germanic nation' (§355A). While Hegel reproduces the book's title imprecisely, he identifies the real name of its author (who had published under the pseudonym Feodor Eggo) and, in an uncharacteristic effort, even gives the book's date and place of publication. Hegel's fondness for Stuhr's work is further attested by the fact that he had recommended and loaned it to the stepson of his friend Niethammer, the philologist Ludwig Döderlein, in the summer of 1814.²⁰⁹ In the *Philosophy of Right*, Hegel lavishes praise on Stuhr, not only commending his 'profound perception' and 'erudition' but even crediting him with having 'paved the way for the rational contemplation of constitutional history and of history in general' (§355A).

Stuhr and Hegel thus agree that what distinguishes modern from ancient times is 'the right of *subjective freedom*' (§124A). As we shall see throughout the following chapters, virtually Hegel's entire theory of the state and, indeed, his practical philosophy more generally is based on this principle. In the preface to the *Philosophy of Right*, Hegel calls it 'the characteristic of more recent times' to subject anything to the scrutiny of reason and 'not to recognise anything in disposition which has not been justified by thought'.²¹⁰ Elsewhere, he vindicates the '*right of the subjective will*' (§107, §132) and declares that as a modern individual, I hold 'the right to recognise nothing that I do not perceive as rational' (§132A). Put simply, one must understand whatever one is supposed to respect.²¹¹ Declaring this to be an 'obstinacy which does honour to human beings', Hegel reveals his allegiance to the kind of *Aufklärung* Immanuel Kant had advocated in his famous essay.²¹² Applying the '*right of knowledge*' to all rational human beings, Hegel clearly embraces the injunction to make use of one's own reason to guide one's own free will (§117). Freedom is to be found only in thinking.²¹³

²⁰⁹ BZ, 114 (Döderlein to his mother, 14 June 1814). Eggo 1812 is item K 96 in the auction catalogue of Hegel's library.

²¹⁰ PR, preface, 16. For background to the translation of Hegel's 'neuere Zeit' as 'more recent times' rather than the customary 'modern age' in general, see Siep 2017, esp. 201 and n.10.

²¹¹ Cf. VPR19, 577.

²¹² PR, preface, 16; Kant 1784. See also Hegel's reference to Kant in VPG, 525.

²¹³ VPG, 521. Cf. PR, preface, 7; §13A and §21A. On free will, see esp. PR §10 and §27. The anti-authoritarian strand in Hegel's theory of freedom is emphasised by Patten 1999, 63–73. Findlay

Religion plays an important role in this development, too, and Hegel is convinced that, at bottom, religion and the state share the same 'root' (cf. §270A).²¹⁴ For instance, he alleges a connection between 'Mohammedanism' and slavery.²¹⁵ Interestingly, Hegel treats the former as part of 'the Germanic world' in his *Lectures on the Philosophy of History*, even though he thought that Islam's time had already passed.²¹⁶ His mention of 'the unity of divine and human nature' as part of the world-historical 'principle of the *Germanic peoples*' clearly refers to Christ (§358). In the lectures of 1819/20, Hegel even defines the Germanic realm as 'the realm which is based on Christianity'.²¹⁷ The identification of Europe with Christianity of course went back as far as the middle ages. In Hegel's time, it was powerfully reinforced by the Romantic movement as testified by the emblematic title posthumously given to Novalis's 'Christianity or Europe'.²¹⁸ In contrast to the Romantic fascination with Catholicism, however, Hegel thinks specifically of the Protestant variant when he claims that it was 'in Christianity' that humans first achieved consciousness of their universal freedom.²¹⁹ The Reformation, with its notion of the priesthood of all believers, had liberated human beings from the yoke of authority, opened up a space for subjective freedom previously unknown and thereby set human beings on the path towards autonomy and self-determination. According to Hegel, the same principle of subjective freedom is underlying reformed faith and the rational modern state.

In contrast, Hegel – an unorthodox yet vocal Lutheran – claims that 'no rational constitution is possible with the Catholic religion'.²²⁰ The Catholic Church had assumed 'the place of *conscience*', treated 'individuals like children' and exacted 'obedience of faith, without one's own insight'.²²¹ It was thus quite incompatible with freedom; Hegel even speaks of 'absolute unfreedom' in this context.²²² He accounts for the

1958, 354 describes Hegel as 'the philosopher of the "absolute negativity", the believer in nothing that does not spring from the free, uncommitted, self-committing human spirit'.

²¹⁴ VPG, 531. ²¹⁵ VPR24, 1414. ²¹⁶ VPG, 428–33. ²¹⁷ VPR19, 583.

²¹⁸ Novalis 1826. Written in 1799 as 'Europa', it was published as 'Die Christenheit oder Europa. Ein Fragment'.

²¹⁹ VPG, 31. See also the section on the Reformation in VPG, 492ff. On 'the religious dimension in Hegel's thought', see Fackenheim 1967; Taylor 1975, chapter 7; Beiser 2005, chapter 6; Dickey 1987, 1993. Findlay 1958, 354 even claimed that Hegel 'borrowed the whole cast of his thought from Christianity'. More recently, Brudner 2017 has pleaded to recognise the centrality of God in Hegel's thought.

²²⁰ VPG, 531. Cf. *ibid.*, 71–72. This point is concretised with view to ancien régime France at VPG, 529.

²²¹ VPG, 456, 456, 455. See Patten's 1999 discussion of 'Freedom, Authority, and Desire' (63–73).

²²² VPG, 455.

revitalisation of Catholicism in the early nineteenth century, a societal current that was diametrically opposed to the desire for subjective freedom, in truly dialectical fashion. In his personal notes on the *Philosophy of Right*, he registered a 'longing for objectivity' and moral certainty that was to be relieved by 'becoming Catholic'.²²³ The fact that Hegel's nemeses Haller and Friedrich Schlegel were among the most prominent cases of conversion only seemed to confirm his suspicions against the Catholic religion.²²⁴ While Chateaubriand in his *Génie du christianisme* had praised the representative constitution as 'one of Christendom's most beautiful fruits', Schlegel indeed considered the representative constitution anti-Christian.²²⁵ Hegel further interprets the fact that revolution had erupted in all Romance-language Catholic countries as incriminating evidence of Catholicism being essentially at odds with that 'principle of the modern world', to which he tellingly also refers as 'the distinctive principle of Protestantism'.²²⁶ Hegel was certainly not the only one to insist on the link between the right of conscience and the reformed religion either. The scholar Friedrich Gottlieb Welcker, for instance, similarly spoke of the appearance of a 'new Protestantism' in which 'the more developed peoples do no more want to simply believe, but also see, to prove all things and hold fast that which is best'.²²⁷

The characteristic of the Germanic realm, or the modern world, for Hegel, is that that same insight is applied to all spheres of human life. Accordingly, political life must be elevated from a state of 'barbarity and unlawful arbitrariness' (§360), as had prevailed under the feudal system, to one that honours the human self-consciousness of freedom. This 'reconciliation' of world and spirit takes place in constitutional monarchy, where the state unfolds 'as the image and actuality of reason' (§360).²²⁸ As the first lectures on the philosophy of right record, 'this is the culmination of the entire account' that Hegel provides. He is convinced that 'freedom of

²²³ *GW*14,2, 689. Cf. *VPR*22, 915: Instead of thinking for themselves, they subject themselves to authority.

²²⁴ Ironically, Haller's scandalous conversion in 1820 made his work unpalatable in Protestant Prussia, where he had previously enjoyed considerable influence (cf. n.114). Adam Müller had converted to Catholicism in 1805, too.

²²⁵ Aretin 1824, XI. Cf. Chateaubriand 1802 and Schlegel 1823.

²²⁶ *VPR*22, 1011; *PR*, preface, 16. See also *VPR*22, 1012 and *VPR*24, 1417.

²²⁷ Welcker 1831, XI. Cf. 1 Thessalonians 5:21. [Wangenheim]'s 1816 motto invokes the same Bible verse.

²²⁸ *VPR*17, 224–25 explicitly mentions constitutional monarchy within the same phrase.

self-consciousness in religion, constitutional monarchy and the cognition of truth are the principles of our time'.²²⁹

The stark contrast between the levels of consciousness of freedom in the ancient and the modern world has clear implications for constitutional arrangements. Hegel maintains that his contemporaries may learn little from the constitutions of 'earlier world-historical peoples' that operated according to a different 'principle' and knew neither true freedom (meaning objective freedom combined with subjective freedom) nor the representative system. To draw on 'the examples of Greeks and Romans or Orientals for the constitutional arrangements of our time' is therefore entirely 'inept', indeed 'irrational'.²³⁰ The difference in conditions and especially the development of human consciousness is the main reason why Hegel rejects the relevance of ancient constitutionalism for modern times. The fact that ancients and moderns are 'separated by an enormous gap in time and development [*Bildung*]' renders comparative constitutionalism outright 'foolish'.²³¹

The modern state, Hegel was confident, could realise the 'right of self-consciousness, the moment of *subjective freedom*' (§228A). The several ways in which its constitution was to ensure this are further explored in the following chapters. In any case, his conviction that the representative system could contribute a significant measure of subjective freedom in relation to legislation is the reason why Hegel insisted that every modern state must have representative institutions. Already in his unpublished piece on *The German Constitution*, written around the turn of the century, Hegel had claimed world-historical significance for the system of representation as the defining characteristic of the modern state: the 'system of representation is the system of all modern European states . . . it marks an epoch in world history'.²³²

Yet the representative system did not come out of thin air; in *The German Constitution*, Hegel called it 'the silliest delusion' to regard representation as 'an invention of the latest times'.²³³ The historical development of the representative system from feudal relations (between princes who needed money and support and powerful vassals who demanded privileges and a say) was commonly accepted.²³⁴ As Krug put it in his *Representative System*, the Estates, having gained the '*right to participation*', over time 'attained the character of *deputies* or *representatives of the*

²²⁹ VPR17, 224, 225. ²³⁰ VPG, 66, 66, 67, 67; VPR17, 168. ²³¹ VPR19, 536.

²³² GW5, 111. Quoted from Hegel 1999, 63. See Maier 2004 on this. ²³³ GW5, 115.

²³⁴ Cf., for instance, Rousseau [1762a] 2004, 113 (Book III, Chapter 15).

people'.²³⁵ In addition, Krug too emphasised the role played in this development by Christianity and philosophy with their ideas of human dignity and the perceived need to limit rule in order to reign in arbitrariness.

Hegel was certainly not alone in interpreting the representative system as a category of world history. The influential Rhenish publicist Joseph Görres, for instance, saw constitutionalisation as an inherent trend of 'the Occident', where people had now reached a 'level of development' that enabled them to participate in government, in supposed contrast to the peoples subject to Oriental despotism. The particular fate of 'Germany', in his view, was to defend this 'new order at the head of the constitutional states'.²³⁶ Nor was this kind of thinking peculiar to German writers of the time alone. John Bristed, author of *The Resources of the United States of America*, which was published in 1818 and reprinted in London in the same year as *America and her Resources*, diagnosed the yearning for popular representation as a feature common to all of Christianity.²³⁷ Bristed, who had migrated to the United States in 1806, however, was disinclined to credit the Germanic peoples with pioneering the representative system. Clearly, it was 'the Americans, who framed a form of representative government, towards the close of the eighteenth century, thitherto unparalleled in the history of the world, and, as yet, unimitated by other nations'.²³⁸

Hegel, in contrast, invoked the distinctiveness of conditions in North America to reject the United States' exemplary function in his lectures. More fundamentally, however, he considered it 'a state in the making' or an 'undeveloped state[s]' and quite simply not comparable to states in Europe.²³⁹ This seems to explain the general absence of discussions of the United States in the *Philosophy of Right*, a circumstance that was not lost on contemporaries.²⁴⁰ More pertinent yet to contemporary discussion, Hegel rejects the possibility of following the model of the English constitution on the continent. In the lectures of 1824/25, he claims that wanting to introduce 'the English constitution' in Prussia would be 'just as absurd' as giving the Prussian constitution to the Turks.²⁴¹ Presumably, this statement resonated with Hegel's students, for 'Turkey' was regarded as

²³⁵ Krug 1816, 18. ²³⁶ Görres 1818, 44.

²³⁷ Bristed 1818, 465. For this he was commended by [Hegewisch] 1818, 422.

²³⁸ Bristed 1818, 482. ²³⁹ VPR22, 1011; VPR24, 1437. See also VPR17, 170.

²⁴⁰ In a letter to Hegel from 8 August 1821, Nikolaus von Thaden specifically remarks on Hegel's omission of the United States in *PR* (*BII*, 279).

²⁴¹ VPR24, 1425.

the prime model of ‘oriental despotism’ – a term Hegel uses himself in §270A – at the time.²⁴² The English constitution, on the other hand, enjoyed a reputation as *the* model of a liberal constitution, as Hegel himself notes in his copy of the 1817 *Encyclopedia*.²⁴³ The case of England thus offers itself for an illustration of the tension between Hegel’s insistence on the universal value of freedom and the representative system, on the one hand, and the need for constitutions to correspond with a people’s spirit, on the other.

If the French Revolution and its aftermath served largely as an argument against constitutional experimentation, the English constitution featured most prominently as a ‘model’ in constitutional discussions throughout the German lands. It had been widely admired and idealised since at least the publication of Montesquieu’s *De l’esprit des loix* in 1748, which had famously popularised its image as a pillar of liberty (XI,6).²⁴⁴ Next to Montesquieu, the idea of the intrinsic connection between liberty and the English constitution was most importantly disseminated and reinforced by the works of William Blackstone, Jean Louis De Lolme and Edmund Burke.²⁴⁵ While its depiction depended largely on a given author’s political standpoint,²⁴⁶ the British example constituted an immensely important point of reference in the constitutional debate after Napoleon. It had likewise informed the *Charte constitutionnelle* of 1814, which in turn inspired constitutional aspirations across the continent.²⁴⁷ A striking example for the way in which ideas about the English constitution directly entered the German discourse is provided by a group of related publicists based at Kiel, some of whom entertained relations with Hegel. While the aim here cannot be to detail the cultural transfer involved in the German reception of the ‘English’ system of politics, not to mention the distortion of reality involved, I would like to provide some evidence for the fact that it certainly did play a role in the broader discourse on the constitution in Germany at the time.²⁴⁸

²⁴² For a start on this contested stereotype, see Kaiser 2000; Rubiés 2005; and Thomson 2008.

²⁴³ E, 519. On German Anglophilia of the period, see, for instance, McClelland 1971 and Maurer 1987.

²⁴⁴ On the reception of Montesquieu in Germany, see, e.g., Vierhaus 1965; Herdmann 1990; Mohnhaupt 1999.

²⁴⁵ Kraus 2006, 169.

²⁴⁶ A point commonly observed in the literature, e.g., by Lottes 1995, 151 and 154 and Kraus 1998, 122.

²⁴⁷ On the role of the English model in French constitutional debate, see De Dijn 2005a, 2005b, 2008. On the *Charte*’s importance across Europe, see Prutsch 2013, 2018.

²⁴⁸ Kraus 1998, 122 speaks of a cultural transfer in regard to the German reception of the English constitution too. On the notion itself, see the seminal studies by Espagne and Werner 1988 and

The English model was hailed as exemplary in the political journalism of both Franz Hegewisch, son to the well-known professor of history (British and Irish, inter alia) Dietrich Hegewisch, and his brother-in-law Friedrich Dahlmann, a historian himself. Both found a platform to do so in the *Kieler Blätter*, a self-described *journal for the maintenance and enhancement of the patriotic spirit* on which they collaborated as part of a 'society of professors' at Kiel, then part of Holstein. It was hardly a coincidence that their mutual brother-in-law Hans von Colditz translated De Lolme's *Constitution of England* in 1819 and considerable portions of Blackstone's *Commentaries on the Laws of England*, which appeared in two volumes between 1822 and 1823.²⁴⁹ The decision to publish updated or complete translations of two authorities on the mixed constitution during the years of intense constitutional debate certainly reflects shrewd political calculation. Effectively serving as an advertisement for the forthcoming translation of De Lolme, the first three chapters of his *Constitution of England* were published in the *Kieler Blätter* in 1818 already. Here Dahlmann, who served as one of the journal's editors, introduces De Lolme as one of 'England's constitutional classics' alongside John Locke, Blackstone and Burke. He expresses the wish to boost the reception of De Lolme's work in Germany, which 'deserves to be the elementary book of all who want to live in lawful forms of freedom'.²⁵⁰

This aspiration is due, no doubt, to Dahlmann's contention that 'the principles of the constitution towards which all modern European states aspire are most purely developed and preserved in England'.²⁵¹ Hegewisch, in the introduction to John Craig's *Elements of Political Science*, which he co-translated, concurs that no constitution, ancient or modern, is more worthy of emulation than the English. He even goes as far as to claim that all revolutionary evils could have been avoided, had the French only followed the English example. For someone conceiving of politics as 'an empirical science', the weight experience lent to the excellence of the

Lüsebrink and Reichardt 1997. For a succinct introduction to the field, see Thomson and Burrows 2010. References to studies of Anglo-German cultural transfer in particular are provided above in Chapter 1, n. 30.

²⁴⁹ Colditz and Dahlmann were married to Franz Hegewisch's sisters Karoline and Julie, respectively.

²⁵⁰ D[a]hlmann 1818, 458. Dahlmann 1815, 250 had already recommended 'De Lolme, this insightful interpreter [*Erläuterer*] of the English constitution'. Dahlmann also introduced the 1819 translation; Nikolaus Falck, another editor of the *Kieler Blätter*, introduced Blackstone's commentaries.

²⁵¹ Dahlmann 1815, 57.

English constitution was an irrefutable argument.²⁵² Yet Hegewisch's advocacy of emulation does not lack nuance, conceding as he does that 'there is also a changeable part of the English constitution, which is not applicable everywhere'.²⁵³ Rather than copying without differentiation, its principles should be imitated. Hegewisch's comparison of the constitution's function to the way grammar relates to various languages is instructive in this respect. More charitable than other contemporaries, however, he insists that for large states, like Prussia, most aspects of the English constitution are exemplary and recommends its 'gradual adoption'.²⁵⁴ It is telling that even an author publishing under the pseudonym of a 'German patriot' could endorse this line, if one considers the vigorousness of anti-French sentiment in contrast.²⁵⁵ Dahlmann too acknowledges that different solutions are needed in different places while positing that modern Europe has 'a common basic character, [and] is therefore capable of having similar constitutions'.²⁵⁶

'Indeed it is no new thing for continental Europeans to admire and praise the fabric of British polity', noted Bristed writing from America in 1818, who observed 'among some of the nations of continental Europe, a desire to imitate the Constitution of England'.²⁵⁷ Yet other commentators were more critical of what they perceived to be a kind of 'obsession with imitation' and 'mimicry', even 'slavish emulation of what exists in Great Britain' or 'French and English superstition'.²⁵⁸ Instead, they put an even greater emphasis on the organic growth and historical development of constitutional arrangements. The anonymous author of a pamphlet on bicameralism from 1815, for instance, insists that the British two-chamber system is 'the product of England's particular development'. It has grown over centuries and 'will eternally stay unique'.²⁵⁹ In tones reminiscent of Hegel's criticism of a priori constitutions, this author denies the possibility that the English constitution may be 'repeated or copied' by 'any people', for it is 'the achievement of particular circumstances'.²⁶⁰ Some indeed thought that 'the errors about the British constitution, which *Montesquieu*

²⁵² Hegewisch 1816, V. Hegewisch, who was a physician, also expressed his empiricist conviction in the subtitle he added to the book: 'Investigations of the most important civil affairs, according to experience.'

²⁵³ Hegewisch 1816, XXVII. ²⁵⁴ Ibid., XXIX.

²⁵⁵ [Krug] 1816 recommends Hegewisch 1816 on the last page. ²⁵⁶ Dahlmann 1815, 57.

²⁵⁷ Bristed 1818, 480.

²⁵⁸ *Regent und Volk* 1818, 55 [*Nachahmungssucht*]; *Von den Ideen* 1815, 133 [*Nachäfferei*], 124; Koppe 1816, 1773. Cf. [Pölitz?] 1819, 93 and [Varnhagen] 1816a. See also Arndt's 1813 *On the Relation of England and France to Europe*.

²⁵⁹ *Von den Ideen* 1815, 124. ²⁶⁰ Ibid., 127.

and *Delolme* have spread' had been refuted by the very developments in Sicily and Spain that Hegel referenced too. The English constitution's 'splendour' was thought to lie 'exactly in its inimitability, in its inapplicability to all other countries'.²⁶¹ In a more conciliatory tone, however, they mused whether one may not take from the English system of government 'that which is in the nature of things'.²⁶²

An important element in the thought of those who admired England was the idea that the representative system, or the proverbial liberty that followed from it, was of originally Germanic origin. Based on the reading of Tacitus's *Germania*, this notion was only reinforced by Montesquieu, who argued that 'the English have taken their idea of political government from the Germans. This fine system was found in the forests.' Following Montesquieu, representative government was commonly presented as originally Germanic and idealised as 'the best kind of government men have been able to devise'.²⁶³ The same line of thought is to be found in the writings of Dahlmann and Hegewisch. The former explicitly criticises De Lolme for omitting the old Saxon foundation of English liberty, imputing the different political developments of the mainland and insular Saxons to their differing circumstances.²⁶⁴ Hegewisch too proclaims that 'the basics of the English constitution are Germanic', with the representative system originating in 'the woods of Germany'.²⁶⁵ The implications of this view for constitutional development are obvious; it was only natural for the Germans to embrace their original system of government. Doing so, they would flourish in a polity characterised by stable government and political liberty.

Notwithstanding differences of emphasis in favour of emulation or attention to historical particularities, scepticism about the transferability of constitutions generally prevailed and constitutional arrangements abroad provided political arguments rather than ready-made solutions.²⁶⁶ It is however conspicuous how common it was among contemporaries to treat Europe, as the Göttingen historian Arnold Heeren put it, 'notwithstanding the differences of individual peoples, almost as *one* whole'.²⁶⁷ Friedrich Gottlieb Welcker, whose brother was another editor of the

²⁶¹ Cited in *Ueber die Warnung* 1814, 329. ²⁶² *Von den Ideen* 1815, 141.

²⁶³ Montesquieu [1748] 1989, 166, 168 (XXI, 6). Stollberg-Rilinger 1999, 234 points out that the idea of Germanic freedom flourished even before the time of Montesquieu, with a strong reception of Tacitus since the sixteenth century.

²⁶⁴ Dahlmann 1815, 250ff. ²⁶⁵ Hegewisch 1816, XXIX, XIII.

²⁶⁶ Angermann 1974, 4; Prutsch 2018, 39. ²⁶⁷ Heeren 1817, 2.

Anglophile *Kieler Blätter*, for instance, defended the exemplary character of developments in England with the observation that the English were a people both 'related' to the Germans and further advanced 'in civil virtues'. Therefore, he thought, one 'cannot refer too often' to the affairs in England.²⁶⁸

Hegel's own view of the English constitution is rather ambiguous. Aware that it enjoyed a reputation as *the* model of a liberal constitution, Hegel contrasts it directly with 'oriental despotism' and recognises 'much that is excellent' in it.²⁶⁹ At the same time, he ruthlessly criticises the pervasiveness of private rights, most systematically so in his 1831 article on the Reform Bill.²⁷⁰ Crucially, the constitution of England was widely regarded as founded on (feudal) contracts, and that is exactly the problem Hegel sees in it.²⁷¹ State powers had the character of private property, as demanded by Haller, with the result of rights being bought and sold. Hegel was especially puzzled that the British people should prove so reluctant to adopt the principles of freedom and equality when they seemed to be ready for them in terms of their inner development.²⁷² Significantly, the prime model of the British constitution was, of course, not a written constitution either.

While Hegel thus objected to the English constitution on principle, he also restricted its applicability to the British Isles. In early lectures, he invokes the geographical principle explicitly with reference to England, emphasising its 'isolation from the continent' and naval power, which had allegedly produced 'a distinct spirit, and a distinct external constitution'.²⁷³ Pertinent to contemporary discussions of imitation strategies, Hegel explicitly rejects the possibility of following the model of the English constitution on the continent and calls the wish to introduce it in Prussia 'absurd'.²⁷⁴ In denying the possibility of introducing constitutions a priori, he frustrated hopes for the imitation of the English constitution as well as 'liberal' ambitions. In Hegel's view, various times and places simply require very different solutions, and thus comparative constitutionalism is outright 'foolish'.²⁷⁵

²⁶⁸ [Welcker] 1815, 239. On Carl Theodor Welcker, see n. 195. ²⁶⁹ *VPR17*, 155; *VPR21*, 763.

²⁷⁰ The Reform Bill article is contained in *GW16*, 323–404 and, in English translation, in Hegel 1999, 234–70.

²⁷¹ E.g., [Buchholz] 1817, 134, n.; Zahn 1818, 66. ²⁷² *VPG*, 536.

²⁷³ *VPR17*, 170. On Hegel's identification of the ideology of the British Empire as such, see Armitage 2000, 195–98.

²⁷⁴ *VPR24*, 1425. ²⁷⁵ *VPR19*, 536.

At the same time, however, Hegel embraces a version of the Montesquieuian argument, claiming that the 'system of representation ... did not exist in the forests of Germania, but it did emerge from them'.²⁷⁶ This endorsement of the Germanic origin of the representative system implies a belief in the existence of shared principles of government. While Hegel treats most of Europe as one in his account of the 'Germanic realm' in world history, however, he speaks of '*Germanic peoples*' in the plural (§358). The circumstance that they share the same world-historical principle and thus the representative system does not relinquish the need for any given constitution's accordance with its people's spirit. As Hegel's friend Friedrich Förster made clear, the point was not emulation but learning from experience elsewhere: 'the Englishman, the Frenchman, the North American cannot be considered an example for us, but equally our own history and what existed a hundred years ago cannot serve as law today, but for instruction'.²⁷⁷ It is telling, nonetheless, that Hegel considered the *Charte* of 1814 an expression of the French people's spirit when other contemporaries clearly recognised in it the English model.²⁷⁸ To Hegewisch, for instance, there was no doubt that 'the King of France, Louis XVIII has established the main principles of the English constitution with the *Charte*'.²⁷⁹ Another author spoke directly of 'the constitution, which Louis XVIII has given France according to the model of the English'.²⁸⁰

To close the fascinating and rich question of the transferability of constitutions here, the main lines of the debate may be summarised as follows. On the one hand, the representative system was widely regarded as the principle of the modern world by early nineteenth-century thinkers and therefore as shared by most European countries. On the other, there was the insistence on historical differences and particular people's spirits. Thus, different materialisations of the same principle were to be expected rather than the triumph of a universal model. The case of England demonstrates the tension between shared principles and local particularity and thus sheds light on Hegel's position on the representative system as a principle of world history. Yet the sense that various European peoples had to get there individually, by organic growth, reflects the common idea that peoples had to be 'ready', or 'developed' enough, for constitutionalisation and participation in government.

²⁷⁶ *GW*5, 111. Quoted from Hegel 1999, 63. Hegel makes a similar point in *VPR*24, 1447.

²⁷⁷ Förster 1818a, 343. ²⁷⁸ *VPR*17, 163–64. ²⁷⁹ Hegewisch 1816, XVII.

²⁸⁰ *Ein Wort* 1818, 195.

While belief in something like a common character of European peoples was widespread, agreement also existed on the need to respect historically grown differences. The former resonates with Hegel's notion of the world-historical principle of the Germanic world, which asserts constitutional monarchy with a representative system as its common feature. The latter is honoured in Hegel's insistence on a constitution's accordance with its people's spirit and in his denial of the possibility of deriving constitutions 'a priori', with which he aimed to discredit the – in his view misguided – 'liberal' project. Drawing this lesson from failed experiments with abstract principles in the French Revolution and its aftermath, he endeavoured to reconcile organic growth with the demands of reason, history with freedom. While Hegel's attempt has proven extremely influential, the above demonstrates that it was not unusual in the context of his own time.

CHAPTER 3

The Distribution of Power

The point is this, the state must be *one*.

Lectures on the philosophy of right (1824)

Notwithstanding the French and other minor experiments at republicanism, monarchism was the norm in Hegel's time. As discussed in Chapter 1, there was a virtual consensus on the need for both a constitution and monarchy. It certainly extended to Hegel, who dismisses the 'republic' outright as subsuming 'manifold empirical combinations' that are irrelevant to a truly philosophical investigation (§279A). By definition, constitutional monarchy is 'the rational constitution' for Hegel.¹ It alone enables 'true freedom'.² In his lectures of 1817/18, he expounds its fundamental principle thus: 'Constitution and laws are the basis of princely power, the monarch [*Fürst*] must rule accordingly.'³ Monarchs are thus bound to and limited by the law; they do not stand above it.

In accordance with his philosophy of world history discussed in Chapter 2, Hegel extols constitutional monarchy as 'the achievement of the modern world' and declares that 'it has become an entirely futile question' to ask which form of government is the best (§273A). That T. M. Knox's classic translation ('it is quite idle') fails to reflect Hegel's use of tense here ('ist es auch zur ganz müßigen Frage geworden') is significant. While Aristotle's classification of governments into monarchy, aristocracy and democracy adequately captured political systems in the past, it is no more applicable to modern times.⁴ Crowning the historical development of the state as 'an image of developed reason', constitutional monarchy is

¹ *VPR*24, 1430. Cf. *VPR*18, 314: 'Constitutional monarchy – idea of rationality.' ² *VPR*19, 538.

³ *VPR*17, 172.

⁴ Aristotle is explicitly mentioned in the passage corresponding to *PR* §273A in *VPR*17, 166. The conventional way of distinguishing forms of government was also criticised by Kant [1795] 1992, 62 and Heeren 1817, 313 and 470.

in fact 'the only possible constitution' for large states in which 'the system of civil society . . . has evolved'.⁵ All other forms of monarchy, along with aristocracy, which Hegel abhors, and democracy, which he, for instance, admires in the case of Athens, have been overtaken by history.⁶ Such 'less developed shapes of the state' are only possible in 'patriarchal' or 'undeveloped' conditions (§279A). Hegel also espouses the common idea that democracy is only suited to small states.⁷

The main limitation of these 'historical' forms (§273A) is that they are 'one-sided' and lack 'the principle of free subjectivity' – in other words, they are insufficiently rational.⁸ The one-sidedness of the old forms of government is, above all, reflected in their lack of a separation of powers, and their lack of subjectivity is in direct contrast with the role Hegel envisions for the monarch. Each of these elements of his rational constitution will in turn be addressed in the following sections, before the exercise of government and the competences of the Estates Assembly are discussed. By focussing on the arrangement of power in Hegel's organic constitution, this chapter provides a necessary grounding for the analysis in those that follow.

The Separation of Powers

While Hegel's organic conception of the constitution extends to include the institutions of family and civil society, as '*political constitution*', it is foremost concerned with the organisation of state power into 'the *various powers* and their tasks and functions' (§269). Allowing for significant development in Hegel's conception of powers within constitutional monarchy, I am here concerned with his 'new conception of the powers of state since 1817'.⁹ As we shall see shortly, Hegel's layout of state powers is markedly different from the now classic conception of a legislative, executive and judiciary mutually controlling each other.

Within Hegel's rational constitution, there are three powers, namely the '*lawgiving power*', '*governmental power*', and '*princely power*' (§273), which 'constitute in their unity the constitutional monarchy'.¹⁰ Respectively, they are concerned with the determination of general principles, their application to particular instances and final decision-making. In turn, these

⁵ VPR17, 225 (cf. PR §§265, 272A); E, 469, 475 (cf. VPR17, 170).

⁶ In VPR24, 1433 (-PR §279Z), he refers to 'the beautiful democracy of e.g. Athens'. Hegel saw Athens as the culmination of the Greek realm (VPR19, 586).

⁷ E.g., E, 469, 475; VPR17, 169, 206; VPG, 311.

⁸ VPR22, 1011.

⁹ Siep 1992, 259; see also *ibid.*, 240. ¹⁰ VPR18, 313.

three elements reflect 'the three moments of the concept [*Begriff*]' (§279), namely universality, particularity and individuality. Together, they thus realise the very idea of the state.¹¹ The judiciary does not fit into this scheme, and Hegel explains in later lectures that it belongs to a different sphere than the legislative and executive. It is not 'the third [moment] of the concept' – individuality – which is instead present in the princely power, the person of the monarch.¹² Along with police powers, the judiciary is subsumed under the governmental or executive power (§287).

Hence, the very distinction of powers Hegel presents is different from the categories we are used to think in. In the early nineteenth century, however, the triadic notion of a separation of powers into a mutually controlling legislative, judiciary and executive was far from an established wisdom. Especially the theoretical opposition of merely two powers, the executive and the legislative, was a frequently used device.¹³ Contemporary German constitutions did not separate powers at all; instead, they enforced the so-called 'monarchical principle', affirmed in the Vienna Final Act of 1820, according to which all state power was united in the king as head of state.¹⁴ Nonetheless, Hegel's disciple Eduard Gans refers to the distinction of 'three powers, the legislative, the executive and the judiciary' as common in 1833.¹⁵

A good decade earlier, Hegel himself acknowledges that the principle of the separation of powers 'has more or less become a universal insight'.¹⁶ This was certainly in no small measure due to the influence of Montesquieu's theory of the separation of powers as developed in his famous account of the English constitution in *De l'esprit des loix* (XI,6). In his very first publication, which was an anonymous translation of Jean-Jacques Cart's revolutionary *Lettres* on the Vaud, Hegel in fact translated parts of Montesquieu's discussion of the separation of powers. There it is said that the conflation of legislative and executive as well as judiciary

¹¹ For a helpful account of 'Hegel's Conception of the State' organised around the syllogism, see Bellamy 1986.

¹² VPR22, 1010 -PR §272Z. In addition, subjectivity is also present in the form of public opinion (§320), as discussed in Chapter 5.

¹³ Fenske 1975; Boldt 2000, 181. This is confirmed, e.g., by the ideas of [Wangenheim] 1815, 1816; and Paulus 1817a.

¹⁴ See Art. II,1 of the Bavarian constitution 1818; Art. I,5 of the Baden constitution 1818; Art. II,4 of the Württemberg constitution 1819; *Schlussakte* 1820, Art. 57. For discussion of the monarchical principle, see Brunner 1957; Brandt 1968; Boldt 1978, 200ff.; and Böckenförde 1991, chapter 12.

¹⁵ PR §272Z; the lecture transcripts do not contain a corresponding statement, hence my attribution to Gans.

¹⁶ VPR19, 532.

power results in a loss of liberty and that this effect may be witnessed in the cases of both Turkish despotism and Italian republicanism.¹⁷ In a fragment that dates from 1798, just like his Cart translation, Hegel criticises the constitution of his home state Württemberg for exactly such concentration of all powers in the hands of one person, the Duke and later King Friedrich.¹⁸ Hegel remained faithful to the importance of the division of powers decades later, yet his organicist conception of the state led him to criticise the common wisdom on the matter.

Arguably the most important German-speaking proponent of the separation of powers into legislative, executive and judiciary was Immanuel Kant. As a contemporary observed in 1815, Kant's account 'has ... long been pretty much the general opinion'.¹⁹ While Hegel agrees with Kant's, just as well as Montesquieu's, characterisation of the separation of powers as a 'guarantee of freedom', he diagnoses a fundamental misunderstanding in the general notion, especially as developed in France.²⁰ When, in the remark on §272 of the *Philosophy of Right*, Hegel refers to the separation of powers as 'a highly important determination', which has been misunderstood, he criticizes 'the false determination of *absolute self-sufficiency* [*Selbstständigkeit*] of the powers against each other' and 'the one-sidedness of interpreting their relation to each other as negative, as mutual *limitation*'. Their relation is thus construed as one of 'hostility' in which they oppose one another 'and effect, by means of these counterweights, a general equilibrium, but not a living unity'. It is 'the opinion of the rabble' to take 'the negative as point of departure', to presuppose ill will and 'mistrust' and try to construct constitutional 'dams' (§272A). Demanding organic unity instead, Hegel most clearly rejects the notion of checks and balances.²¹

While Montesquieu's account of the separation of powers has recently been reproached as an 'outdated' and unhelpful ideal type,²² such an interpretation neglects his indebtedness to the classical notion of the mixed

¹⁷ GW2, 499f. Cf. [Hegel] 1798 (K 1219–21) and Cart 1793 (K 1143). ¹⁸ GW2, 109.

¹⁹ [Wangenheim] 1815, 75. See Kant 1797, §§45–51 (in Hegel's library: K 344).

²⁰ VPR17, 157. Kant is explicitly mentioned here. VPR19, 532 records that 'in France, this theory has been especially developed'.

²¹ Hegel's advocacy for differentiation rather than a strict separation of powers and his opposition to any mechanistic notion of balancing powers or checks and balances is clearly reiterated in the second edition of the *Encyclopedia* from 1827, §§542 and 544A.

²² Hansen 2010, 516. This author laments a supersession of the theory of the mixed constitution whose 'essence' consists in 'checks and balances' (523) by Montesquieu's theory of the separation of powers.

constitution and the element of checks and balances within his theory.²³ The latter, described by Montesquieu as *power checking power* (XI,4), certainly featured prominently in the reception of his theory by Hegel and his contemporaries. An example is provided by the prominent legal scholar Paul Johann Anselm Feuerbach, writing in 1813. Invoking Montesquieu's famous description, he refers to England as 'the noteworthy example' of a '*mixed* constitution'.²⁴ In that form of government, the powers of state 'are, through their separation, put into constant mutual conflict with each other'. It thus operates entirely on the premises of 'balances' and 'limits'.²⁵

Hegel too interprets limitation as essential to Montesquieu's theory but at the same time ascribes to him a strict separation of powers characterised by mutual 'independence'.²⁶ Straw man or not, these are the very aspects of a separation of powers Hegel wants to combat. The constitutionalist Karl Salomo Zachariae, who reviewed the *Philosophy of Right* when it first appeared, would even claim that 'by its innermost nature, the representative constitution is a constitution of *balance*'.²⁷ To Hegel, this approach to the constitution is entirely mistaken. He stresses how wrong it is to think of the separation of powers 'merely as something limiting', for when they are portrayed as 'balancing each other', the aspect of unity is missing.²⁸ In simple terms, 'the state must be *one*'.²⁹ Conceiving of the state as a 'rational organism' (§286), Hegel presents a solution to the problem of reconciling the division of powers with their unity.

Hegel's stance on the separation of powers is ambiguous and may indeed fairly be described as dialectical, focussed on the reconciliation of unity and difference. On the one hand, he stresses the need for differentiation of the powers of state when saying that, in a rational constitution, 'each of the three moments of the concept has its separate [*ausgesonderte*] shape which is *actual for itself*' (§279). On the other, he objects to their strict separation as independent powers. Instead of a system of checks and balances, Hegel envisions a synthesis in which each of the three powers contains elements of the others within it, with all of them presenting '*one individual whole*' (§272). He puts it most clearly in the lectures of 1822/23, when he says that 'the powers of the state must be distinguished, but

²³ Weston 1965, 125–26; Shklar 1987, 112; Bellamy 1996, 445ff. ²⁴ Feuerbach 1813, 57.

²⁵ Feuerbach 1813, 58. ²⁶ VPR24, 1451. Montesquieu is explicitly mentioned here.

²⁷ Zachariä 1839, 210. See Z[achariae] 1822 for his review of *PR*.

²⁸ VPR19, 533. To me, it seems rather impermissible to disregard Hegel's critique of the separation of powers, as Meckstroth 2015 does in his account of 'Hegel's debt to Montesquieu' (144).

²⁹ VPR24, 1452.

always form a whole with the others'.³⁰ Hegel repeats that 'the particular activities and powers of the state' are not 'self-sufficient and fixed' but are rooted in 'the unity of the state' (§278). In a rational constitution, each power 'is in itself the *totality*' by containing the other moments within itself (§272). In the *Philosophy of Right*'s sections on the princely power (§275) and the legislative (§300), Hegel reiterates that each of them contains 'the three moments of the totality' (§275). While this may sound somewhat obscure, the key to Hegel's account of the relation between the various powers lies in organicism.

The organic body metaphor is pervasive in Hegel's theory of the state and illustrates his problem with the mechanistic conception of checks and balances conventionally connected with the notion of a separation of powers. At the same time, the history of this widely used and highly versatile metaphor – which of course underlies the very notion of the state's 'constitution' itself – cautions against the acceptance of any inherent antagonism to the image of the state as a machine.³¹ Around the turn of the century, Hegel already repudiated 'the basic prejudice that the state is a machine with a single spring [i.e., the monarch] which imparts movement to all the rest of the infinite clockwork'.³² In the *Philosophy of Right*, he insists twice on the difference between (organic) 'members' and (mechanical) 'parts' (§278A, §286A; cf. §276) and explains that 'in the rational organism, each member, by maintaining itself for itself, thereby maintains the others in their particularity' (§286). In later lectures, Hegel refers to 'the fable of the belly and the other members' recounted in Livy, which appeals to the unity of the body politic.³³ While each organ has its distinctive tasks to fulfil, they do not hinder but sustain each other.

The body metaphor also sheds light on Hegel's characterisation of the powers as 'fluid members' of the state (§276). In the lectures, he draws a very graphic analogy between the various powers dissolved into a larger whole and 'the entrails of bodies' that 'appear as dissolved in blood'. There, 'all difference of the members is dissolved'.³⁴ In perpetuation of the organic body metaphor, Hegel says that, in analogy to 'the animal organism' – which he had discussed in §§274–77 of the *Encyclopedia* – their

³⁰ VPR22, 1009.

³¹ On this, see Brunner, Conze and Koselleck 1978, vol. 4, 519–622; Nokkala 2019, chapter 5; Stollberg-Rilinger 1968.

³² GW5, 174. Nisbet alternatively translates 'Räderwerk' as 'mechanism' in Hegel 1999, 22.

³³ VPR24, 1413 –PR §269Z. The allusion is repeated in PR §276Z and the metaphor is also present in VPR19, 529.

³⁴ VPR19, 574.

'isolation and separate existence constitute disease' (§278A). He thus explicitly objects to a 'division of state affairs' that is 'merely mechanical' and insists on the 'organic relation' of the powers of state (§286A). This notion is fundamentally at odds with the idea of checks and balances. Hegel's disagreement with a mechanistic conception of the state is also expressed in his explicit rejection of the notion, common among contemporaries, of various elements of the state as mutually limiting 'dams' (§272A),³⁵ of which more in Chapter 4.

While Hegel insists on the rational necessity of his organicist conception of the state, he also takes clues from political practice, where the independence of powers has never been a reality. His own conception of the division of state power thus addresses the 'notorious' problem that a strict separation of powers is impracticable 'in reality'.³⁶ In the lectures of 1819/20, he draws an illuminating analogy between the state and ancient 'Greek art'. While various artists, such as poets, painters and sculptors all contributed their own labours, they were allegedly infused by the same 'spirit' and thus constituted a great whole larger than its individual components.³⁷ In a similar way, we may think about 'the organic unity of the powers of the state', where '*one* spirit' determines and brings about what is in the universal interest (§299A).

Historically informed, especially by the course of the French Revolution, Hegel specifically warns of the opposition between legislative and executive and the destructive consequences it may have (§272A). With a view to 'the latest idea' that the legislative be independent, he retorts that the French Revolution has clearly shown that 'such independence overturns the unity of the state'.³⁸ He further points out the difficulty of drawing a line between the tasks assigned to each the legislative and the executive, which often overlap in practice, especially because the legislative is virtually always involved in the act of governing (§299A). Instead of mutual limitation, Hegel proposes a model of cooperation. This is illustrated by his plea for the admission of ministers and state councillors to proceedings of the Estates Assembly. Chiding their exclusion, he recommends the adoption of the English practice of having ministers attend parliamentary sessions. Even without having a vote, they may advance proposals and provide information and thereby prevent unnecessary quarrels between the Estates and the government. In this way, such an

³⁵ This is obscured by Nisbet's translation as 'defences'; Knox retains the literal sense in choosing 'dikes'.

³⁶ Bellamy 1996, 439; *VPR*22, 1010 and *VPR*24, 1448. ³⁷ *VPR*19, 531. ³⁸ *VPR*24, 1451.

arrangement contributes to the preservation of political unity. As is further explored below, the legislative within Hegel's organic constitution is expressly constituted by the monarch and the government in addition to the Assembly of Estates.

The organic division of powers is the very feature that distinguishes constitutional monarchy as 'the achievement of the modern world' from all other forms of state. Hegel claims that, in analogy to the animal kingdom, more highly developed states are characterised by a greater degree of articulation: 'only through this division is [the state] something living, organic'.³⁹ Essentially lacking the 'inner differentiation' characteristic of 'a developed organisation' (§273A; cf. §279A), the historical forms of government have all been 'one-sided'.⁴⁰ In reality, however, this phenomenon is far from restricted to antiquity but extends right into Hegel's own time. In the lectures, Hegel says that, just as in feudal times and patriarchal societies, in 'Turkey' and 'Asian monarchies' the separation of powers is merely a sham. It is altogether external, while in reality the ruler holds all powers.⁴¹ Closer to home, Hegel diagnosed a tendency towards the accumulation of all state power in the person of the Duke of Württemberg in his 1798 fragments.⁴²

Against Hegel's ideality, contemporary patriarchal theory as propounded by Carl Ludwig von Haller still rejected the idea of a separation of powers and conflated all state power. Crucially, Hegel thought that 'the participation of all in all affairs' characteristic of 'the democratic constitution' had precisely the same effect and was 'per se' opposed to 'the principle of the *division* of powers'.⁴³ Just as they demonstrate a lack of differentiation of powers, feudal states are missing 'substantial unity' as they are characterised by struggle between various powerholders and the private ownership of state offices (§276). In Hegel's view, the same problem had emerged in the course of the French Revolution, when the legislative started to assume all power from the executive.⁴⁴ Yet the unity of differentiated powers represents 'the basic determination of the political state' and lies at the heart of Hegel's very conception of sovereignty (§276).

³⁹ VPR17, 156. ⁴⁰ VPR22, 1011. ⁴¹ VPR19, 534, 538. ⁴² GW2, 109.

⁴³ GW20, 516 (*Encyclopedia* 1830, §542A). Cf. the same paragraph in the *Encyclopedia* edition of 1827 (GW19, 379). Instead of *Trennung*, Hegel uses the word *Theilung* here, which has the connotation of sharing rather than separation. In fact, Friedrich Ancillon suggested to distinguish between these two German terms at the time (Fenske 1975, 948). *Gewaltenteilung* has become the standard in modern German, but *Verschränkung* is often used to express the entanglement of powers in practice.

⁴⁴ For a depiction of this struggle, see for instance VPG, 532.

Consequently, previous forms of state entirely lack any ‘sovereignty of the state’ in the proper sense (§278) – the constitutional state is sovereign alone, and indeed the monarch has a crucial role to play in this, as the following section will show.

In the end, the extent to which Hegel presents a genuine alternative to the notion of mutual checks may be questioned. Notwithstanding his rhetorical insistence on organic unity, certain features of his theory are clearly reminiscent of checks and balances. Examples are a two-chamber system designed not only to mediate between the prince and the people but also to improve decision-making – the designation ‘house of review’ comes to mind – and the accountability of government to the Estates Assembly. These aspects are further explored below and in the following chapters, where especially the legislative, as the locus of popular representation, is extensively discussed. First, however, Hegel’s reproach of lacking unity in all forms of state beside constitutional monarchy prompts a discussion of the role of the monarch.

The Role of the Monarch

The vindication of monarchy is an integral part of Hegel’s constitutional design. As the predominance of this form of state was hardly contested at the time Hegel was writing the *Philosophy of Right*, this element of his political thought was not at all unusual in the context of his time. In the reception of his thought, on the other hand, it has been a constant bone of contention. On its interpretation seemed to hinge whether Hegel could be branded as a conservative, if not totalitarian, or a liberal seeking to accommodate the powers that were. Without much exaggeration, the advocacy of monarchy may be described as the most controversial part of Hegel’s theory of the state.⁴⁵ An exploration of the role of the monarch within Hegel’s theory of the state is therefore indispensable in the context of this study. Hegel’s reasons for advocating a hereditary form of monarchy will be examined in this section, while the next treats the extent of power Hegel’s monarch really wields. I argue that, in Hegel’s view, the presence of a decision-making hereditary monarch constitutes an instance of the subjective freedom characteristic of the modern world.

A good starting point on the monarch’s constitutional role is provided by the observation, made in the previous section, that Hegel’s princely

⁴⁵ See Yack 1980, 709; Brudner 1981, 119; Tunick 1991, 482; Westphal 1993, 262; Schnädelbach 2014, 250.

power corresponds to the moment of individuality. In practice, this refers to the fact that the monarch, as an individual, takes final decisions at his own discretion, following his personal conscience. (I am using male pronouns because Hegel does so too. Without providing much explanation, Thom Brooks has argued that it is important to Hegel that the monarch be male.⁴⁶ That seems indeed the logical consequence of Hegel's exclusion of women from public life discussed in Chapter 5, although history of course provided counter-examples. And although Hegel does not specify when a royal line is ended, the analogy drawn between succession in hereditary monarchy and the institution of the majorat, featured in Chapter 4, where male family members only inherit, suggests that women do not qualify.) He is even described as 'the conscience of the state'.⁴⁷ An example is provided by the monarch's role in the appointment of officials. From a pool of several equally qualified candidates, as determined through 'examinations',⁴⁸ he chooses one at random (§292). In this, as in many other cases where objective criteria for decision are lacking, the monarch is the 'absolute deciding moment' in the state (§279). To my mind, the translation by both H. B. Nisbet and T. M. Knox as 'absolutely decisive moment' less clearly pronounces the power of absolute decision whose exercise is the characteristic role of Hegel's monarch.

The need for an explicitly subjective and therefore 'ungrounded', or random, decision in cases where objective grounds for decision-making are lacking has always existed, Hegel argues (§279). In antiquity, it was satisfied through the use of oracles; but in modern states, the monarch assumes their function by declaring the royal will as the final decision. One of the lecture transcripts explicitly records that 'this I will constitutes the great difference between the ancient and the modern world and therefore it must have its particular existence in the great building of the state'.⁴⁹ Remarkably, Hegel argues that the existence of a monarch as 'the moment of *ultimate decision*, as of *self-determination*' reflects the principle of free subjectivity we have encountered in Chapter 2 (§275). By replacing the function of the oracles of antiquity with the royal 'I will', the monarch realises the right to insight and subjective will characteristic of modern human beings. The modern relocation of 'the *final decision*' to human will as expressed by the monarch thus signifies a tribute to the powers of self-consciousness and 'human freedom' (§279A). Hegel even thinks that

⁴⁶ Brooks 2007b, 107 and 118.

⁴⁷ *VPR19*, 551. Cf. the description in *VPR24*, 1440 as 'the privileged conscience'.

⁴⁸ *VPR17*, 184; *VPR22*, 1019. ⁴⁹ *VPR24*, 1433.

people in developed states unconsciously feel the 'need' for a monarch; after all, he remarked, millions of his contemporaries let themselves be ruled by persons distinguished neither by physical prowess nor their intellectual powers.⁵⁰ In the same way, Friedrich Welcker diagnosed 'an obscure longing' for a prince, whose existence 'is necessary for our feeling, even if we were less conscious of this being so'.⁵¹ Hegel's explanation is that, ultimately, the office of the constitutional monarch is needed to satisfy the demands of subjective freedom.

In his capacity as the final decision-maker, the monarch provides the focus point of all state power and presents the embodiment of state sovereignty. In Hegel's words, in the princely power, 'the different powers are subsumed in an individual unity'. Accordingly, it is 'the apex and the beginning of the whole – of *constitutional monarchy*' (§273). This metaphor is significant, yet rather easily lost in the standard English translations of the *Philosophy of Right*, which render the same term – *Spitze* – as 'head' in later passages.⁵² In the lectures, Hegel also describes the monarch figuratively as 'top of the pyramid'.⁵³ The monarch expresses the very unity or totality of state powers discussed in the previous section, which must be 'summed up in a commanding centre' and indeed converge 'in an *actual* individual unity for the last decision of will'.⁵⁴ Thus, 'the state culminates (comes to a head) in [the monarch] as an individual'.⁵⁵

Even in the less developed forms of government – old monarchies, aristocracies and democracies as mentioned above – the need for 'an individual top [head]' is recognised. 'All action and actuality', Hegel contends, 'has its origin and its execution in the decisive unity of a leader' (§279A). In other words, everything proceeds from the monarch as 'the moment of *ultimate decision*' in the modern state (§275). It is in this way that the Crown represents the very unity of the state organism. It is no coincidence that Hegel discusses unity and sovereignty especially under the heading of 'the princely power', for it is in the constitutional monarch that they are represented. As the discussion of sovereignty in Chapter 2 has shown, Hegel intrinsically connects the presence of a monarch with the existence of a state in the true sense of the word. The prince embodies the subjectivity of the state, which is therefore only fully realised in monarchy.

There can be no question that the existence of a power that is, at least in ideality, supreme is a core concern of Hegel's. This emphasis on the princely power has been interpreted as an affirmation of the 'monarchical

⁵⁰ VPR24, 1437 – PR §281Z. ⁵¹ [Welcker] 1815, 228. ⁵² E.g., in PR §279A.

⁵³ VPR17, 157 and 161; cf. *ibid.*, 172. ⁵⁴ E, 479; VPR17, 161. ⁵⁵ VPR18, 315.

principle' introduced above. In the *Assessment*, all state power is indeed portrayed as originally in the King's hands, who then decides freely to involve the people.⁵⁶ As a consequence, Hegel's separation of powers has been described as 'anti-liberal'.⁵⁷ Yet he insists that 'the princely power presupposes the other moments just as it is presupposed by each of them' (§285). His concern with the presence of a supreme power played a role in Hegel's rejection of prominent alternative visions of the relation between the various state powers as seen in the previous section. In the lectures, Hegel explicitly criticises Kant's separation of powers into legislative, executive and judiciary as inorganic because he accords the power of 'final decision' to each of the three and consequently no power is 'subordinate' to another. With the powers thus separated, mutual integration (or the aspect of totality) is missing and they do not represent the 'moments of the concept', as they should.⁵⁸

Hegel's insistence on the need for an apex of state power equally leads him to reject Fichte's theory of the ephorate, named in reference to the eponymous Spartan office. In his 1796 *Grundlage des Naturrechts* (*Foundations of Natural Law*), which Hegel even cites in the remark on §273, Fichte had devised an ephorate of elders who oversee government activity as an alternative to a separation of powers. Hegel clearly did not think much of this proposal, chiding it as 'homespun' in his lectures.⁵⁹ It shares the same fundamental weakness detected in Kant's conception, namely the lack of a commanding centre. In Hegel's view, Fichte effectively posits two opposing 'independent powers', namely the ephorate and the executive, whether it be monarchical, aristocratic or democratic.⁶⁰ Nothing would be easier than for the executive to simply dismiss the ephors, thus breaking down all division of power.

While Hegel characteristically presents his position as following from the demands of reason, his emphasis on the princely power is not least historically informed. 'The history of the French Revolution', he declares, 'provides the most decisive example' for the catastrophic consequences of rivalry between equal, independent powers of state.⁶¹ Hegel's demand for unity within the state logically follows from his diagnosis of the lack of a determinate centre of power as the fundamental 'error' of 'all constitutions of the French'. With 'powers standing side by side', a struggle for control and supremacy will always 'inevitably' ensue, just like it did in France,

⁵⁶ *LW*, 34. ⁵⁷ Stolleis 1992, 136. ⁵⁸ *VPR*17, 157.

⁵⁹ *VPR*19, 534 [so *ein hausbackener Verstand*]. See Fichte 1796/2000, chapter 3.

⁶¹ *VPR*19, 534. Cf. *PR* §272A&Z.

⁶⁰ *VPR*17, 162.

eventually producing the Terror.⁶² For this reason, Hegel advocates the 'monarchical principle' in the sense of having one individual at the head of state by birth.⁶³

In Hegel's own words, hereditary monarchy is 'one of the more recent results of history, which is of the highest importance for public freedom and the rational constitution, although it is often least understood . . . even if it is respected' (§286A). Once more, it is worth recalling the point made in Chapter 1, that hereditary monarchy was widely accepted as a guarantee for peace and stability at the time. Yet the fact that constitutional monarchy is necessarily hereditary for Hegel has seemed especially puzzling to posthumous commentators. The young Karl Marx for one sharply ridiculed the notion of a monarch determined by nature, saying that according to this logic, a horse is born to be a horse just as much as a king is born to be king.⁶⁴ It may indeed seem surprising that Hegel, with all his insistence on the need for rationality, defends a 'monarchical constitution' that determines 'succession on the basis of primogeniture' (§286A). He certainly pondered this concern himself and did not fail to address it in his lectures. There, Hegel counters the objection that it is 'irrational' to leave the decision over who is to be monarch to nature with an interesting metaphor, likening the existence of such a 'groundless', 'immediate' element within the organic constitution to the bone's presence in animal bodies. This image is meant to illustrate, in fittingly dialectical manner, how the Idea itself must go beyond its rational nature and 'determine itself' to assume the shape of its alterity.⁶⁵ At the same time, Hegel was well aware that he was asking quite a lot with the assumption of this point of view.

In the remark on §279 of the *Philosophy of Right*, he admits that 'the concept of the monarch' is 'the most difficult concept' from the viewpoint of the understanding, and elsewhere, he reserves the treatment of 'majesty' for philosophical consideration (§281A; cf. §280A). Other contemporaries agreed that monarchy possessed a quasi-religious or mystical character that eluded the faculty of understanding. Friedrich Welcker, for instance, declared it to be 'a mystery' contained in statecraft, drawing an analogy between the exalted position of the 'queen bee' and 'princely houses'.⁶⁶ Hegel in turn considers divine right as an approximation to describe the character of majesty but ultimately rejects it. Although he thinks that the notion of divine right hints at a kernel of truth, as explained in Chapter 2, it is still inadequate to capture the essence of majesty. After all, 'God has

⁶² VPR17, 172.

⁶³ VPR24, 1440.

⁶⁴ Marx [1843] 1982, 104.

⁶⁵ VPR24, 1435.

⁶⁶ [Welcker] 1815, 230, 231, 231.

also made the worst [of things]'.⁶⁷ Here, one is reminded of Rousseau's remark that 'all power comes from God, I agree; but so does every disease, and no one forbids us to summon a physician'.⁶⁸ Ultimately, divine right is a 'thoughtless and irrational' justification that modern humans cannot accept.⁶⁹

Hegel equally rejects arguments from utility, and especially reliance on the notion of the 'welfare of the people (*salut du peuple*)', which may be mobilised in ways diametrically opposed to the institution of monarchy, as happened in France, where the *Comité de salut public* instigated the Terror (§281A). The fact that Hegel considers the viewpoint of utility altogether incapable of justifying monarchy, however, does not mean that he takes no account of arguments coming from that direction. In fact, his professed disdain for utilitarian justifications of hereditary monarchy may even be questioned. For instance, Hegel registers as a great advantage provided by 'natural succession' the prevention of factional strife for the throne and the concomitant threat to the state's stability (§281A). Contemporaries like Hegel's former friend Paulus advocated hereditary monarchy for this reason. He repeatedly stresses the importance of impartiality and advocates heredity of the king 'so that the election does not entangle him in parties'.⁷⁰ Likewise, Germaine de Staël and Benjamin Constant supported hereditary monarchy for this reason.⁷¹ Their mention here is not out of place altogether, for Francophile Hegel was certainly familiar with the work of these two liaised authors, whose intellectual presence in Germany was considerable at the time. Hegel owned and read Madame de Staël's *De l'Allemagne*, which also circulated in translation and quickly became a bestseller.⁷² According to Hegel's first biographer, Benjamin Constant was one of his favourite French writers.⁷³ The attention generally paid to Constant's political writings at the time is well illustrated by the fact that his *Réflexions sur les constitutions* (*Reflections on constitutions*) from 1814 were translated into German within just two months of their

⁶⁷ VPR22, 1018; VPR24, 1436.

⁶⁸ Rousseau [1762a] 2004, 6 (Book I, Chapter 3) Cf. Wood's note in Hegel 1991, 465.

⁶⁹ LW, 60. ⁷⁰ Paulus 1814a, 616.

⁷¹ D'Hondt 1988, 102. For more detail, see Fontana 1988, 2016. In his only mention of Hegel, Selinger 2019, 135 claims that Constant's 'conception of constitutional monarchy was adopted by Hegel', which I find very problematic.

⁷² Hegel's library held the French edition from 1813 (K 750–52), from which he excerpted too (GW22, 5–6).

⁷³ GW2, 608. Unfortunately, the excerpts on whose basis Rosenkranz made this judgement no longer exist. Hegel's library contained Constant's *Mémoires sur les cent jours*, 2 vols. (Paris, 1820/22) as items K 1004–05.

appearance.⁷⁴ While the similarities between Constant's and Hegel's vision of constitutional monarchy are sometimes extremely striking, there are also significant differences. Most importantly, Hegel's monarch does not correspond to Constant's *pouvoir neutre*, a neutral power not involved in the day-to-day governance conducted by executive, legislative and judiciary.⁷⁵ Hegel also differs with respect to the rationale for hereditary monarchy and allegedly counts the avoidance of factional strife for hardly more than a pleasant side effect, claiming that it is a consequence of monarchical heredity, not a reason for it (§281A).

Even so, Hegel shares the entire argument that the institution of heredity excepts royal decisions from passion by ensuring that personal qualifications and characteristics play no role in the selection of monarchs. The opposite is the case in elective monarchies, where everything depends on individual whim and the affairs of state are governed by passion. As discussed in Chapter 2, Hegel's negative view of this alternative form of monarchy was decisively informed by the history of the Holy Roman Empire. Its system of electoral contracts had rendered the Emperor dependent on his electors' wishes, the powers of state had thereby degenerated into mere private property and, eventually, 'the weakening and loss of the state's sovereignty and with it its inner dissolution and outward destruction' had followed. Hegel rejects elective monarchy as 'the worst of institutions' precisely because it renders the constitution subject to particular will and the reign of passions and thereby puts the state in jeopardy (§281A). As part of the rational constitution and the organic organisation of the state, Hegel presents 'hereditary succession' as an institution that guarantees 'public freedom', due to the monarch's disinterestedness and the futility of trying to manipulate future officeholders (§286A; cf. §301A).

The only case in which Hegel allows for the monarch's election by the Estates is when the line of succession naturally ends, that is, when a dynasty goes extinct. Except for such extreme cases, the Assembly of Estates must secure the line of succession to the throne.⁷⁶ Strict adherence to hereditary succession is the ideal case, however, only where rule is legitimate and not the result of conquest. This carries significant ramifications for Hegel's assessment of the German resistance to Napoleon, whom

⁷⁴ Constant 1814a, 1814b. Constant's broader reception in early nineteenth-century Germany is discussed in Gall 1963.

⁷⁵ See chapter 2 of Constant's 1815 *Principes de Politique*, which is dedicated to a discussion of 'the nature of royal power in a constitutional monarchy'.

⁷⁶ *VPR*17, 208.

he quotes as retorting the German princes at Erfurt in 1808 with the following: 'Je ne suis pas votre prince, je suis votre maitre' (I am not your prince, I am your master).⁷⁷ To Hegel's mind, this hit the nail on the head, acknowledging that under conquest, there is no organic constitutional bond between the people and their ruler. He thus distinguishes rebellion from opposition to a conqueror, where the relation between the ruler and the people is merely contractual. In such circumstances, resistance is consequently not a 'crime against the state'.⁷⁸ In the lectures of 1824/25, Hegel also chooses a more topical example, which Eduard Gans omitted from the 1833 edition of the *Philosophy of Right*, although he included the quote from Napoleon in the addition to §281. In front of his students, Hegel shows himself clearly sympathetic to the efforts of what came to be called the Greek War of Independence. To him, it is obvious that 'the Turkish Emperor' is a 'legitimate monarch only over the Turks, not the Greeks'.⁷⁹

This illustrates Hegel's dismissal of the positivist idea that legitimacy, 'a term which has been used a lot lately', rests on de facto rule. What matters to Hegel, instead, is 'the legitimacy of legitimacy' and that, he claims, is founded on the philosophical Idea, not political facts.⁸⁰ Trying to grasp the concept of monarchy by way of the mere understanding is hopeless, according to Hegel, because it is ultimately self-originating (§279A). He thus seeks to except monarchy from all calculation and claims heredity to be intrinsic to it (§280). In §281, Hegel asserts that what really constitutes majesty is the 'idea of something *unmoved* by arbitrariness'. Ideally 'exalted above all passion', the majesty of the monarch 'is thus the unity of the state'.⁸¹ Hegel maintains that 'all particular qualities' of the monarch are 'irrelevant'; all that matters is the existence of the 'I will' or somebody who signs the bills presented by cabinet.⁸² This means that, in theory, anyone could be monarch. Exactly for this reason, Hegel thinks that person should be identified in some random manner, and he opts for 'natural' determination, insisting that the monarch must be determined 'in an immediate, natural way, by natural *birth*' (§280). In Hegel's view, the institution of heredity achieves the desired result by ensuring that personal qualifications and characteristics play no role in the selection of monarchs. Thus, their final decisions are simultaneously rendered random and removed from the realm of arbitrariness.

⁷⁷ VPR24, 1437–38 ~PR §281Z. ⁷⁸ VPR24, 1438 [Staatsverbrechen].

⁸⁰ VPR24, 1437.

⁸¹ VPR24, 1436.

⁸² VPR24, 1434.

⁷⁹ VPR24, 1437.

The Exercise of Government

Eventually, it seems crucial to determine how much power Hegel's monarch really wields. On the one hand, Hegel's insistence on the necessity of an apex of power within the state organism and the role as final decision-maker seems to invest the prince with considerable influence. In contrast to despotic rule, however, where a particular will counts for law, be it an individual's or the people's (ochlocracy), Hegel's monarch is by definition constitutional and bound by the law (§278A). As he puts it in the lectures of 1817/18, 'constitution and laws are the basis of princely power, the monarch [*Fürst*] must rule accordingly'.⁸³ Indeed, the rational constitution must ensure that the prince is '*unmoved* by arbitrariness' (§281); this is the whole point of heredity. While Hegel acknowledges that the monarch is in reality more relevant according to some constitutions than others, he advances the king's relative powerlessness as an objection to the claim that monarchy subjects a state to contingency on account of royal arbitrariness.

An idea of just how far Hegel is from advocating anything even remotely resembling a Führer state, despite his emphasis on the princely power and the materialisation of a subjective will, may be glimpsed from his comment on the English monarchy. There, Hegel sees his demand for a supreme power satisfied by the circumstance that 'the king is this ultimate apex'. In reality, however, the monarch has been rendered virtually powerless by the constitution. Not once has it happened since 1692, says Hegel – conspicuously overlooking the fact that a female monarch, Queen Anne, withheld assent from the Scottish Militia Bill in 1708 – that the royal veto has been used against a parliamentary decision. This circumstance notwithstanding, however, the English constitution displays the 'inner unity of the concept' cherished by Hegel.⁸⁴ In practical terms, the stability of the English monarchy and the absence of a revolution for more than a century must certainly have impressed him, like so many contemporaries.

Precisely because Hegel thinks the individual character of monarchs should not be allowed to upset the rational organisation of the state, their competences are subject to considerable limitations in his account. In fact, he conceives of 'the moment of princely power' as 'something rather formal', at least in peacetime.⁸⁵ Hegel's monarch has to intervene 'primarily' in cases of 'emergency' and royal competences seem to be most extensive in wartime.⁸⁶ This is because the state's '*individuality*', which

⁸³ VPR17, 172.

⁸⁴ VPR17, 162.

⁸⁵ VPR19, 574 [*mehr nur ein Formelles*].

⁸⁶ VPR19, 551.

the monarch represents, finds expression especially in the context of external, or what today one might call international, affairs (§321). The monarch guides diplomatic affairs, commands the armed forces and takes decisions over war and peace (§329). In domestic affairs, on the other hand, the princely powers are mostly exercised by government officials and professional judges. According to §293 of the *Philosophy of Right*, 'monarchy hands over [the particular affairs of state] to the official bodies'. While the latter fulfil their duty in discharging them, it is also a constitutional right that these authorities, rather than the monarch, handle the execution of government. Hegel distinguishes this execution clearly from the taking of decisions and allocates it to 'the *governmental* power', which subsumes police powers and the judiciary (§287).

In contrast to the monarch as the individual and subjective element in decision, the princely power also contains the ministry as the particular and objective counterpart that decides according to 'knowledge' and 'legal and other reasons' (§284). In these respects, monarchs are indeed 'dependent' on their staff, who provides the information on which they base their decisions.⁸⁷ While the monarch has to approve of government actions, it is the ministers and their staff who contribute 'the *objective* aspects of decision' and carry the responsibility for their execution (§284). This principle of ministerial responsibility and the concomitant one of sovereign inviolability is one noticeable point of convergence between Hegel's and Constant's conceptions of constitutional monarchy alluded to earlier.⁸⁸ It is also in direct agreement with Article XIII of the 1814 *Charte constitutionnelle*, which contained many features of Hegel's rational constitution.

Virtually the entire system of government as envisioned by Hegel thus relies on the presence of a '*middle class* in which the educated intelligence and the lawful consciousness of the mass of the people is found' (§297). This class is non-existent in what he considers less developed states like Russia or Poland.⁸⁹ In this context, it helps to remember that, as a university professor, Hegel was a state employee himself, and that except for some noble exceptions, his students belonged to this stratum of society too.⁹⁰ It is for the considerable role he accords to the ministries

⁸⁷ VPR24, 1439.

⁸⁸ Next to Constant's 1815 *Principes de Politiques*, see his separate treatise *De la responsabilité des ministres* (Paris, 1814).

⁸⁹ VPR24, 1445. According to Suter 1971, 70, Hegel was 'one of the earliest nineteenth-century partisans of the middle class as a political force'.

⁹⁰ Hegel's wife Marie von Tucher came from a patrician family in Nuremberg.

and officials that Hegel has usually been seen as an advocate of ‘enlightened bureaucracy’ by those who reject the notion of the Prussian state philosopher. This is well illustrated by the following quotation from Allen Wood: ‘Hegel plainly intends real political power to be in the hands neither of the prince nor of the people, but an educated class of professional civil servants.’⁹¹ As long as the state is institutionally well organised, the royal personality thus seems to be nearly irrelevant.

It is in the lecture transcripts of 1822/23 that the following famous sentence is recorded: ‘So what is needed for a monarchy is to have a person who says “Yes”, dots the I.’⁹² Within the framework of Hegel’s rational constitution, ‘only the name is necessary’, which is ‘the empty I will’.⁹³ Because the supreme office should be such that the particular character of its occupants is of no significance, their personal influence is very limited. This is the case even where the royal prerogatives to pardon as well as to appoint and dismiss ministers are concerned. While the prince’s choice of ministers is completely arbitrary in theory (§283), it is not as unqualified as it appears at first either. As we shall see shortly, the Estates watch over the ministers and may impeach them, thus rendering talent and qualifications decisive in practice. Hegel further reinforces this tendency by providing for a career open to talent (§291). In the end, the monarch merely chooses officials from a pool of equally qualified candidates who have already proven their abilities in ‘examinations’.⁹⁴ The monarch’s appointment thus seems to be rendered a mere formality, for the sake of infusing state officials with an aura of authority (§292). With respect to the right to pardon, Hegel insists that it does not constitute a capricious interference with justice. Rather, it is a spiritual power that ‘nullif[ies] the crime by forgiving and forgetting’ while legally, the culprit remains a criminal (§282). As Hegel explains in the lectures of 1824/25, ‘pardon is the remission of punishment, it does not cancel right’.⁹⁵

Given constitutions that are less than ideal, however, Hegel does reserve the right for royal intervention in the workings of the judiciary ‘when it judges badly’.⁹⁶ To some extent, this may also reflect Hegel’s personal animosity towards lawyers and positive jurisprudence. In any case, he thinks that as long as institutions are still imperfect, the fight against corruption ‘requires and justifies the higher intervention of sovereignty’ (§295A). That Hegel counted this among the tasks of the monarch indeed

⁹¹ Wood 1991, xxiv. Cf., e.g., Schnädelbach 2014, 255. ⁹² VPR22, 1015 –PR §280Z.

⁹³ VPR24, 1432. ⁹⁴ VPR17, 184; VPR22, 1019. ⁹⁵ VPR24, 1438 –PR §282Z.

⁹⁶ VPR19, 551 [*wenn schlecht gerichtet wird*].

becomes clear in the lectures when he says that, under such circumstances, 'sovereignty must intervene'.⁹⁷ For illustration, he invokes 'the notorious case of miller Arnold', which was well-known to contemporaries (§295A). In broadest outline, the story was that Friedrich II of Prussia had come to the help of this miller and his wife, who had allegedly been treated unfairly by the bench in favour of a nobleman. In 1779, Friedrich overturned several verdicts, sacked his chancellor and had the judges arrested for partiality. The case, which, given the agency of Rosine as well as Christian Arnold in petitioning, is more appropriately called that of the millers Arnold in the plural, made a sensation and was discussed throughout Europe. The significance of Hegel's commendation of Friedrich's action appears to have not been quite appreciated by existing scholarship, although it carries notable implications for Hegel's division of powers. Indeed, it contradicts 'the dominant opinion of two centuries', which 'has been that King Frederick II's intervention violated justice and the rule of law'.⁹⁸

At the time, however, Hegel was not out on a limb. August von Kotzebue, the most successful playwright of the time and therefore a powerful public voice, for instance, interpreted the King's action as creating equality before the law, exemplifying the principle that a commoner counts just as much as a noble.⁹⁹ Friedrich's own justification of his action in a published protocol had in fact provided a template for such interpretation.¹⁰⁰ Hegel for his part was concerned with the constitutional prevention of 'the abuse of power' by officials (§295), which he had already chastised most harshly in his *Assessment*.

There, he delivered a damning criticism of Württemberg's notary system in which the scribes had been awarded a monopoly on all official paperwork. According to Hegel, this 'privileged caste' had abused their position and developed into a kind of 'civil aristocracy', reducing the general population to a condition of 'scribe-serfdom'.¹⁰¹ Among contemporaries, this notion seems to have had some currency; for instance, the diary of Sulpiz Boisserée, an illustrious art collector and friend of Hegel's, registers a 'patriciate of the scribes' too.¹⁰² The connection to §297 of the *Philosophy of Right* is evident, where Hegel emphasises the need to prevent

⁹⁷ *VPR*9, 551.

⁹⁸ Luebke 1999, 379. This author is concerned to provide a 'reappraisal' of the affair.

⁹⁹ Kotzebue 1818, 265. ¹⁰⁰ The protocol from 1779 is cited in Luebke 1999, 383, n.12.

¹⁰¹ *LW*, 109, 108, 106.

¹⁰² Boisserée 1978, 391 (entry from 21 May 1817). For a historian's interpretation sympathetic to the scribes, see McNeely 2002, 2004.

the ‘*middle class*’ that stocks the official bodies of state from assuming ‘the isolated position of an aristocracy’. In the remark, he explicitly refers to the historical transformation of ‘the administration of justice’ into ‘an instrument of profit and domination’ (§297A). Indubitably, such development of ‘education and skilfulness’ into ‘a means of arbitrariness and domination’ has to be counteracted in a rationally organised state (§297). Their training should provide officials with the right mindset and ethical disposition, and the larger the state, the further will they be removed from the temptations of particular interests (§296). Where abuse still persists, institutional remedies come into play. On the one hand, the self-administering communities will exercise checks ‘from below’. In addition, the prince should hold officials accountable and effect a ‘control from above’ (§295). This illustrates well how Hegel perceives of the organic interplay of powers, in contrast to any strict separation of their competences.

In this connection, the great challenge Hegel identifies with regard to the executive is the organisation of its agencies, as their various competences have to be both separated and unified. Accordingly, there seem to be three levels of the civil service: lower, middle and upper, with the separation of competences taking place on the middle plane (§290). True to his organicist conception of the division of power, Hegel assigns the task of determining this organisation of the executive to the legislative, to which we shall turn now, focussing especially on the Estates Assembly. After all, the central political question at the time concerned popular participation and representation.

The Place of the Estates Assembly

When Hegel first gave his lectures on the philosophy of right, he was of course keenly aware that Estates had ‘lately’ been ‘vigorously’ demanded in several German states.¹⁰³ He embraced this demand for the representative constitution by allocating a place for popular representation in the legislative of the rational state. The state Hegel presents in the *Philosophy of Right* has even been described as a model of ‘parliamentary monarchy’.¹⁰⁴ While Hegel, like most of his contemporaries, consistently avoids the word ‘parliament’ unless when referring to existing institutions in Britain and France, the ‘Estates Assembly’ certainly forms an integral part of his theory of the state. Notwithstanding his exasperation with the glaring abuses of

¹⁰³ VPR17, 201.

¹⁰⁴ Ilting 1983, 25–26. Cf. e.g. Wood 1991, xxiv.

the old Württemberg Estates, Hegel declares his aim in the *Assessment* to lie precisely in defending the concept [*Begriff*] of the Estates, which form an 'important vital element added to the state organism'.¹⁰⁵ What he advocates is a renewal of the institution rather than its abolition, and in the *Philosophy of Right*, he provides a philosophical justification for the existence of an Estates Assembly by declaring it indispensable for the realisation of subjective freedom in the modern state.

Hegel's argument goes as follows. Given that the right of insight and self-consciousness must be satisfied in modern times (see Chapter 2), it would be insufficient to simply institute laws in the name of the people without any involvement on their part. The necessary participation in government is realised through the Assembly of Estates, which 'represents the people' and, by its approval, renders the law an expression of 'the general will'.¹⁰⁶ As Hegel puts it in the *Philosophy of Right*, the particular purpose of the Estates Assembly is to bring into existence 'the moment of subjective *formal freedom*, the public consciousness as *empirical universality* of the views and thoughts of the *many*' (§301). It is in this respect, Hegel suggests despite reservation, that the Estates – and especially the second chamber, whose members are elected (see Chapter 5) – may be thought of as 'the democratic element' of the constitution.¹⁰⁷ Through these representatives' share in legislation, civil society is related to the state, and the general population gets to 'have a say' and participate in state affairs.¹⁰⁸ Thereby, 'the subjective moment of universal freedom' or the right to insight and subjective will – to know and agree to what is going on – that exists in the individual members of civil society is collectively realised in the realm of the state. It is this 'inner necessity' on which Hegel's plea for the Assembly of Estates rests (§301A).

Having established the necessity of the Estates Assembly, Hegel also addresses its inner workings. In his *Critique of Hegel's Philosophy of Right*, Karl Marx notes that 'Hegel develops less the content of the Estates' activity, the legislative power, than the *position* of the Estates, their political rank'.¹⁰⁹ There are two sides to this statement worth highlighting. First, in isolation, Marx's remark obscures the fact that the Estates form only one part of the legislative. In the lectures, perhaps especially those of 1819/20, which directly preceded the publication of the *Philosophy of Right*, even Hegel tends to conflate the tasks of the legislative in general with those of the Estates Assembly in particular, thus equating them to a considerable

¹⁰⁵ *LW*, 125, 52. ¹⁰⁶ *VPR*17, 190 [*der allgemeine Wille*].

¹⁰⁷ *VPR*17, 196; *VPR*18, 317; *VPR*24, 1458.

¹⁰⁸ *VPR*24, 1453.

¹⁰⁹ Marx [1843] 1982, 73.

extent. It is of singular importance, however, to note that the Estates Assembly constitutes only one part of Hegel's legislative. Indeed, he describes it as 'the main element' of the legislature in his early lectures and the 'most interesting' one in later lectures.¹¹⁰ Yet, in accordance with his organicist conception of the constitution, the governmental and princely power share in legislation too. Respectively, they contribute the 'advisory moment' and the power of 'ultimate decision' (§300).

Second, Marx's judgement regarding Hegel's focus on the development of the position of the Estates as opposed to their activity is only partly true. Insofar as it applies, this is possibly due to Hegel's conviction that the determination of the specifics of political practice is not for philosophy, as is evident in his derision of Fichte's details on 'the perfection of *passport regulations*' in his *Foundations of Natural Law*.¹¹¹ Nonetheless, Hegel does provide considerable detail on the competences of the Estates Assembly, especially when one pays attention to the *Assessment* and the transcripts of his lectures in addition to the *Philosophy of Right*. Before addressing the institutional structure and composition of the Estates Assembly in Chapters 4 and 5, its competences will accordingly be discussed in the remainder of this chapter.

'The legislative power', Hegel points out in the lectures of 1824/25, 'is an important subject in general, but especially in relation to the latest ideas and general prejudices'.¹¹² Accordingly, he sets out to dispel a number of common misconceptions about the Estates Assembly. To start with, he most clearly does not envision a constitutive assembly, and his reasons for considering such a notion altogether misguided have been addressed in Chapter 2 already. Instead, Hegel maintains that the legislative power is 'itself a part of the constitution, which is presupposed to it' (§298). Logically, then, the legislative cannot determine the constitution, but it may, and indeed should, contribute to its further development through legislation. Further, Hegel considers it utterly mistaken to portray the Estates as 'a necessary counterweight against the supreme power', as happens 'most often'.¹¹³ In this context, he even downplays their significance, insisting that every other institution of the rational state safeguards public freedom just as much. In fact, he writes, some of them, 'such as the

¹¹⁰ VPR17, 189; VPR24, 1451.

¹¹¹ PR, preface, 15. Cf. GW4, 56–57: Hegel had already criticised Fichte's passport police in his 1801 *Differenzschrift*. See Fichte 1797, 146 (§21).

¹¹² VPR24, 1446. ¹¹³ VPR19, 559.

sovereignty of the monarch, hereditary succession, constitution of the courts, etc.’, provide a far stronger guarantee (§301A).

Another widespread notion Hegel seeks to counter is that the people or their deputies ‘*must know best* what is in their best interest’ and will ‘undoubtedly’ pursue it most adamantly. Far from it, Hegel says and characterises ‘the people’ as the very part of a state ‘that *does not know what it wants*’ (§301A). In French revolutionary times, for instance, all that could be specified as ‘the true content of the public will’ was the desire to end feudalism and bring about the rule of law.¹¹⁴ The way in which these goals were to be achieved, however, remained indeterminate. In contrast to the general public, ‘the highest state officials’, namely ministers and their staff, are in a far better position to know what the state really needs (§301A). In this context, Hegel also criticises the prejudice of thinking of the governmental or state interest as opposed to popular interest. After all, the monarch and civil servants are just as much the people’s representatives as elected deputies. Hegel thus treats with scorn ‘the viewpoint of the rabble’, which expects ‘ill will, or less good will’ from the government (§301A). Before his students, he counters such ‘common demagogical assertion’ with the claim that the government may in fact care more for the universal interest than the Estates.¹¹⁵ Inter alia, the old Estates of Württemberg, who stood accused of grave corruption, were certainly on his mind here.¹¹⁶

Given this negative description, one must ask what the Estates Assembly actually does and how powerful it is. Although Hegel’s Estates lack independent power and do not take decisions by themselves, it is misleading to claim that they ‘do not decide anything’.¹¹⁷ It is true that Hegel accords the Estates no formal right to initiate legislation, which lies with the monarch and is exercised by the ministers, who carry responsibility for royal proposals.¹¹⁸ Yet the Estates communicate the people’s wishes to the monarch – the ‘holy right’ of corporations to submit petitions to the Estates is mentioned in the early lectures – and may thus induce the formal initiation of new bills.¹¹⁹ Forming a deliberative assembly, they then clearly take part in both ‘deliberation and decision on *universal matters*’ (§309), effectively constituting ‘a council of citizens for the

¹¹⁴ *VPR*9, 560 [Wollens]. ¹¹⁵ *VPR*17, 190.

¹¹⁶ See *LW*, 48, 58 and Buchetmann 2020a, 162.

¹¹⁷ Stolleis 1992, 136. Yeomans’s 2017, 484 observation that ‘the assembly’s function must be less to legislate, than to publicize’ is misleading too (on this, see Chapter 5).

¹¹⁸ *LW*, 36; *VPR*17, 192.

¹¹⁹ *VPR*17, 207. For a way into the literature on historical petitioning, see Oddens 2017.

government'.¹²⁰ In §314 of the *Philosophy of Right*, Hegel explains that the 'distinctive purpose' of 'the institution of Estates' – the realisation of 'the moment of *formal* freedom' – is achieved through their 'joint knowledge, joint deliberation and joint decision on universal matters'. The Estates Assembly thus actively shares in the task of legislation.

In fact, the measure of power of decision Hegel allocates to the Estates Assembly is rather permissive when viewed in relation to contemporary demands and constitutional developments. For instance, the Vienna Final Act of 1820 stipulated that 'the sovereign can only be bound to participation of the Estates in the exercise of certain rights'.¹²¹ Standardly, the latter were interpreted to mean decisions touching on the freedom and property of citizens as well as the constitution.¹²² The Rhenish advocate for constitutionalisation Johann Friedrich Benzenberg explicitly says about an Estates Assembly that 'the chambers' purpose is not to govern'.¹²³ Instead, they merely move government to act in alignment with public opinion. As we shall see in Chapter 5, the latter element is certainly present in Hegel's account of the functions of an Estates Assembly too. Yet his organicist conception of the constitution also entails that, through their share in legislation, the Estates are involved in 'the universal affairs of government' (§298).

The Estates' share in legislation is all the more significant as Hegel's legislative is concerned not only with laws in the immediate sense but also with the 'universal internal affairs' of state (§298). In the latter respect, it overlaps significantly with the executive, as discussed in the context of the separation of powers above. It is only consequent when Hegel denies the existence of 'specific limits' to the Estates' sphere of activity because the distinction between 'law and the disciplining of the execution' is not clear-cut.¹²⁴ In reality, the law-giving power governs too. Examples of the kind of general affairs of state that fall into the legislative domain are the rights of communities and corporations, civil and criminal legislation, public institutions, infrastructure and, partly, colonies. (T. M. Knox's translation of 'ganz allgemeine Veranstaltungen' in §299 of the *Philosophy of Right* as 'organizations of a wholly universal character' is misleading. What Hegel means are not the rights of such organisations but public institutions and infrastructure, as the lectures show.) Even the organisation of the

¹²⁰ VPR17, 194. ¹²¹ *Schlussakte* 1820, Art. 57.

¹²² Boldt 2000, 187–89. Cf., e.g., Württemberg's 1815 draft constitution; Benzenberg 1815, 22; [Wangenheim] 1815, 240.

¹²³ Benzenberg 1816, 239. ¹²⁴ VPR19, 561.

administration is a task of the legislative, in the sense of determining 'the competence of particular authorities'.¹²⁵ This goes to show that the competences of the legislative, and with it those of the Estates Assembly, are in practice quite extensive.

Yet Hegel also recognised the danger of subsuming too many administrative tasks under the legislative power (as he thought had happened in France).¹²⁶ One 'matter that is often talked about' and that Hegel explicitly excepts from the Estates' field of competence is decisions over war and peace.¹²⁷ As a part of foreign relations and thus the state's external sovereignty, they belong definitively and solely to the monarch. Hegel not only negates the idea that fewer wars would be fought if Estates Assemblies decided on them but even affirms the contrary, on account of popular passions. This also constitutes a rebuff of Kant's influential idea of a perpetual peace among republican states, which Hegel explicitly contradicts in §333A.¹²⁸ (In contrast to Kant, Hegel dismisses the very possibility of lasting peace and conceives of the relations between states along Hobbesian lines, that is, as a state of nature and therefore war (§324).¹²⁹ An interesting dimension is added by Hegel's insistence on the necessity of states' mutual recognition, particularly in relation to his own experience of war, the crumbling of empire and the establishment of the Holy Alliance in 1815.) Insofar, however, as its concurrence on financial matters, namely taxation and spending, is necessary, the Estates Assembly possesses 'an indirect influence' over decisions concerning war and peace.¹³⁰ Indeed, Hegel conceives of the Estates' 'concurrence in the determination of taxes' and the corresponding 'examination of public need and control over the lawful use of public dues' to be one of their main tasks.¹³¹

Taxation was of course a highly contentious issue in the wake of the revolutionary and Napoleonic wars that had reduced considerable portions of the lands in Central Europe and beyond to poverty.¹³²

¹²⁵ *VPR*17, 187. ¹²⁶ *VPG*, 532. ¹²⁷ *VPR*19, 561.

¹²⁸ Cf. Kant [1795] 1992, 61–62. An English translation of the essay is contained in Kant 1996, 311–52; for commentary, see Bohman and Lutz-Bachmann 1997 and Kant 2006. More historical context is provided by Kleingeld 2011; Maliks 2014, chapter 5; Nakhimovsky 2011; and Kaposy, Nakhimovsky and Whatmore 2017.

¹²⁹ Hegel's international thought has not been extensively studied so far; some perspectives are provided by Avineri 1972, chapter 10; Vincent 1983; Nederman 1987; Harris 1993; and Boucher 1998, chapter 14.

¹³⁰ *VPR*19, 561. Cf. *PR* §329Z. ¹³¹ *VPR*19, 562.

¹³² This is, for instance, pointed out by *Regent & Volk* 1818, 9. On the 'total war' character of Napoleon's conquests and German mobilisation against him, see Bell 2007; Hagemann 2004; and

Characteristically, Hegel's position on the matter is determined by the tension between the need to provide institutional guarantees for subjective freedom, on the one hand, and for the stability of the state, on the other. In line with his anti-positivism, he first of all justifies the very levy of taxes in the form of money as conducive to the realisation of subjective freedom. By giving only money to the state, modern persons retain the power to choose which actions to perform and which not. The state can no longer order specific individuals to build pyramids or act as judges but uses tax revenues to hire individuals willing to do so. It may be superfluous to point out just how starkly this contrasts with totalitarian aspirations. In fact, Hegel presents the 'conversion' of the state's demand for services into monetary demands as conducive not only to freedom but also to equality, as it enables 'the *quantitative* determinacy and thereby the justice and equality of services' (§299A). The only exception is constituted by military service in times of extreme need, but otherwise Hegel advocated an army of professionals (§§325–26).¹³³

Naturally, subjective freedom is also realised through the Estates' right to approve of taxation. Without such an approximation of popular consent to taxation, Hegel believed, there could be no freedom. He had translated a quotation from Montesquieu to this effect in his very first publication.¹³⁴ In this context, the background of the American Revolution with its famous slogan 'no taxation without representation' is certainly pertinent. After all, the Boston tea party is explicitly mentioned in the translation Hegel made of Cart's *Lettres*, published in 1798. In a note he added there, Hegel found that the point of contention was not the amount of taxes to be paid but the fact that the colonists were barred from participating in the process of their determination. The Americans felt that, along with the 'insignificant sum' the British Parliament demanded, 'they would have lost the most important right'.¹³⁵ This appraisal shows Hegel's agreement with Cart, who thought he had 'proven that we are only taxable according to our will' and declared it a 'great truth, that we may not be taxed without the Estates' assent'.¹³⁶ Hegel remained faithful to this principle when he wrote the *Philosophy of Right* two decades later.

Given the troubles in Württemberg, however, Hegel was reluctant to concede the Estates independent financial competences, which would put

Hewitson 2017. For further background, see Nipperdey 1983/2014, chapter 1; and, more broadly, Laven and Riall 2000 and Dwyer and Forrest 2004.

¹³³ Both Hegel's brother and son Ludwig chose a soldier's life, dying on campaign in Russia and Batavia, respectively.

¹³⁴ GW2, 452. ¹³⁵ GW2, 470. ¹³⁶ GW2, 469.

them in the position of an opposing power to the government. Such arrangement had not only led to much abuse in the past but also contradicted the very principle of state sovereignty. While the Estates may control state finances in an imperial fiefdom, Hegel maintains that such a right cannot be granted in a sovereign state. He points to France and England, where Parliament does not handle 'the administration of the treasury' either.¹³⁷ A counterexample is provided by the city of Emden in East Frisia, where the Estates even held the right to an army of their own. Its history, Hegel writes, shows that the struggle between two quasi-sovereign powers will inevitably destroy the state (and he drew the same lesson from the French Revolution). If one does not grant the Estates the right to raise their own army, a provision most people agree on, then giving them the pecuniary means to do so makes no sense. Financial control would give the Estates too high a degree of independence; eventually, 'the state would . . . cease to be a state and be destroyed by the two sovereign powers within it'.¹³⁸

It is for the same reason that Hegel objects to the instrumentalisation of the Estates' right to approve taxation as a means 'to coerce the governments', as other contemporaries liked to do.¹³⁹ This may be how things worked in the Old Empire, but that, as we know, Hegel did not consider a proper state. In a modern state, what cannot be granted 'always only concerns a small amount', a trifle.¹⁴⁰ In order to secure harmony and the state's unimpeded operability, Hegel thus effectively denies the possibility of the Assembly's withholding assent, stating that it may simply be prorogued by the government in such cases. This seems to drastically reduce the notion that the right to approve taxes provides the Estates Assembly with considerable influence, indeed 'an indirect control over government affairs', as modern states are almost predominantly concerned with finances in their day-to-day operations.¹⁴¹ In the lectures of 1822/23, Hegel even claims that finances lie outside the realm of legislation, which should be concerned with universals rather than particulars.¹⁴² To an extent, the assent of an Estates Assembly to taxation seems to be reduced to a mere formality to realise the modern right to subjective freedom. What Hegel endeavours to do, however, is to change people's mindset.

While recognising the right to scrutiny, Hegel ultimately considers it 'rational' and thus an absolute rather than a 'merely positive duty' for the individual to pay taxes and thereby contribute to the maintenance of the

¹³⁷ *LW*, 87. ¹³⁸ *LW*, 59. See also *ibid.*, 92. ¹³⁹ *VPR19*, 562. ¹⁴⁰ *VPR22*, 1028.

¹⁴¹ *VPR17*, 206. ¹⁴² *VPR22*, 1010. Cf. *VPG*, 532.

state.¹⁴³ Being essential to the political community's continued subsistence, the Estates' approval of taxation is not to be thought of as 'a gift' to the state; on the contrary, Hegel asserts, it is 'for the best of individuals', for the people's own good.¹⁴⁴ Consciousness of this fact produces the effect that taxes are highest in freely constituted states, nowhere more so than in England: 'The people there know that what they do, they do for the state.'¹⁴⁵ If a constitution really was to be judged according to the amount of taxes levied under it, Hegel had translated from Cart in 1798, 'England's constitution would be the worst of all'.¹⁴⁶ General opinion of course asserted the contrary, as we have seen. What Hegel seems to envision, optimistically relying on the integrity of representatives and clairvoyance of government officials, is a reasonable determination of taxes on which everyone can agree, without the necessity of recourse to the formal means of protest.

Next to the matter of taxation, there are several other ways in which the legislative interferes with the power of the executive. The characteristic contribution of the Estates, Hegel explains in §301A, lies in the 'addition of insight' they provide into the work of lower government officials and 'in particular into more urgent and specialised needs and deficiencies' and in the 'public censorship' of government activity they effect. Both Knox and Nisbet translate *Censur* as 'criticism', yet I think Hegel judiciously employed the term, well aware of its implications. In the lectures, he equally commends the subjection of governmental acts to a *Censur der Stände*, or 'censorship by the Estates'.¹⁴⁷ Although Hegel values cooperation and conceives of the Assembly as a 'council of the state', he undoubtedly thinks the Estates should also hold ministers and officials accountable.¹⁴⁸ They collect and investigate complaints about officials and have, in this respect, been referred to as essentially constituting 'organised public opinion'.¹⁴⁹ By doing so, the Estates Assembly helps to ensure that governance is exercised conscientiously and focussed on the common good. Where the knowledge of being subject to public scrutiny is not enough to ensure the proper conduct of government officials – and, Hegel importantly adds, the representatives themselves – 'impeachment' is a possibility.¹⁵⁰

¹⁴³ VPR19, 562. ¹⁴⁴ VPR22, 1027 –PR §301Z. Cf. PR §184Z.

¹⁴⁵ VPR22, 1028. Cf. PR §302Z and GW16, 341–42 ('On the English Reform Bill', 1831).

¹⁴⁶ GW2, 462. ¹⁴⁷ VPR19, 561. ¹⁴⁸ E, 475. ¹⁴⁹ Rosenzweig [1920] 2010, 428.

¹⁵⁰ VPR17, 206.

Hegel recommends such ‘control over the governmental power’ as ‘the greatest guarantee for the ministers’ aptitude and lawful disposition’.¹⁵¹ His emphasis on the need for an opposition in the lectures of 1817/18 has led to the observation that they seem to contain a ‘parliamentary’ moment missing from all later texts.¹⁵² Yet I think it is not altogether absent from the other lectures and even the published *Philosophy of Right*. After all, §315 describes the Assembly meetings as a forum where the general public ‘gets to know and learns to respect the work, abilities, virtues and skills of the state authorities and officials’. On the one hand, Hegel thus pleads – against the example set by the French Constituent Assembly – to include ministers and privy councillors in Assembly meetings, as happens in England.¹⁵³ Surely it also implies the questioning of ministers that Hegel demanded and described as ‘one of the greatest spectacles’ in the lectures.¹⁵⁴ The oppositional moment is thus still present and forms an important part of the Estates Assembly’s function as a provider of ‘*political education*’ for the general public.¹⁵⁵ In Hegel’s words, ‘the moment of *universal knowledge*’ is extended ‘through the *publicity* of Estates proceedings’ (§314), and thus the Estates Assembly affords a great ‘means of education’ that enhances public understanding of state affairs (§315). In connection with the necessity of a free press, this aspect will be further discussed in Chapter 5.

In closing this chapter, it may be observed that Hegel’s model of constitutional monarchy, which accords the princely power to one person, governmental power to several and legislative power to many, is somewhat reminiscent of the ancient ideal of the mixed constitution. He makes this allusion himself in the remark on §273, where he simultaneously disapproves of how much ‘has been talked about the democratic, aristocratic elements *within monarchy* in recent times’. Hegel considers this ‘not appropriate’ because ‘insofar as they occur *within monarchy*, they are no more democratic and aristocratic’ (§273A). This indicates that he is just as far from simply ‘mixing’ constitutions as he is from ‘separating’ powers in the conventional sense. As this chapter has shown, instead of a system of checks and balances, Hegel envisions a synthesis in which each of the powers contains elements of the others within it, with all of them presenting ‘*one individual whole*’ (§272). Next, we shall turn towards the institutional arrangement of popular representation, which, as Marx observed, had been so important to Hegel.

¹⁵¹ VPR17, 193. ¹⁵² Siep 1992, 253.

¹⁵³ Cf. *Constitution française* 1791, Title III, Chapter 1, Section 3, §4 (K 1262 in Hegel’s library).

¹⁵⁴ VPR17, 193. ¹⁵⁵ LW, 114.

Debating the Two-Chamber System

The Assembly of Estates will therefore split into *two chambers*.

G. W. F. Hegel, *Philosophy of Right*

Hegel's espousal of a two-chamber system has hardly been problematised in the existing literature, that is to say questioned and subjected to elaborate scrutiny rather than merely accepted as a given.¹ Maybe that is due to the rather unassuming way in which §312 of the *Philosophy of Right* establishes that 'the Assembly of Estates will therefore split into *two chambers*'. Perhaps we are also rather too much used to considering the representative system with two chambers an obvious choice. In Hegel's lifetime, however, this was far from self-evident. The years following the fall of Napoleon were the first time the two-chamber system was introduced in any German state. Before this happened first in Nassau (1814) and then in Baden, Bavaria (1818), Württemberg, Hanover (1819) and Hesse (1820), one contemporary emphatically declares, 'in all of Germany one never knew anything of two chambers'.² Of course, this statement refers to first-hand experience; the two-chamber system was well known from political systems of antiquity to Britain and France to the United States of America. While the first written continental constitution with a two-chamber system was heavily indebted to French debates, it was in fact the Polish one from 1791. The Napoleonic era presented a 'regression in the development of the two-chamber system' throughout Europe.³

In the immediate post-Napoleonic context, the option of bicameralism was debated anew. While the existence of a consensus on the necessity of a Chamber of Peers has been claimed for the French constitutional debate around this time,⁴ that was certainly not true for German-speaking Europe, as demonstrated by the titles of pamphlets such as the

¹ While I use the Latinised term 'bicameralism' and its adjective for variation, Hegel and his contemporaries did not.

² Varnbüler in *Drey Vorträge* 1816, 134. ³ Gulitz 1917, 51. ⁴ De Dijn 2005b, 252.

poet-politician Ludwig Uhland's *Keine Adelskammer* (*No Chamber of Nobles*) alone.⁵ Oddly enough, German constitutional histories conventionally do not seem to problematise the two-chamber system either.⁶ Yet the question of whether the people's representation should be organised in one single or two separate bodies was in fact hotly contested in the years of state reorganisation that followed the demise of the Napoleonic empire. In 1816, the diplomat and chronicler Karl August Varnhagen, later Hegel's friend, referred to the bicameral question as 'an all-important and now universally discussed matter'.⁷ A few years later, Karl Heinrich Pölitz, professor of history and politics at Leipzig, noted that the question of whether to have one or two chambers had been passionately discussed in recent times and remained one of 'the most important and most difficult tasks statecraft [*Staatskunst*] has to solve'.⁸ In this chapter, I will reconstruct the arguments advanced then, both in favour of a two-chamber system and in opposition to it, and argue that Hegel's acceptance of bicameralism must be understood as taking a deliberate stance in the constitutional debate of post-Napoleonic Germany.

In his lectures of 1824/25, Hegel explicitly refers to 'the question of whether an Assembly of Estates should have one chamber or two chambers', adding that unicameralism had often been chosen because it was allegedly more conducive to the Assembly's purpose as 'the democratic element' of the constitution.⁹ Yet Hegel manifestly rejects such an arrangement, and the following exploration will elucidate his reasons for doing so. It was in 1817, and thus in the immediate context of the constitutional debate after Napoleon, that Hegel first formalised a theory of political institutions and presented it to the public. A discussion of the Estates Assembly's institutional design is still absent from the *Encyclopedia*, published in May or June 1817, and it has been noted that Hegel developed his theory of institutions in the lectures of the following winter semester as a consequence of his involvement in Württemberg's constitutional conflict.¹⁰ In his *Assessment of the Proceedings of the Estates Assembly of the Kingdom of Württemberg in 1815 and 1816*, Hegel explains that the King (Friedrich) had initially granted 'an estate-based representation' consisting of elected and non-elected members 'both in *one chamber*'.¹¹ He points out

⁵ Uhland 1817.

⁶ Even Stolleis 1992, who focusses on constitutional thought, seems to accept it as given.

⁷ [Varnhagen] 1816c, 182.

⁸ Pölitz 1823, 392.

⁹ VPR24, 1455.

¹⁰ GW15, 291; cf. Jamme 1986 and Pöggeler 1987, 174. On the (first) *Encyclopedia*'s dating, see GW13, 630–31.

¹¹ LW, 35.

that power relations resulting from this arrangement, where fifty noble members are outnumbered by seventy-three commoners, are very different from those in 'the system of two chambers', which has 'important authority due to its more common introduction and age'.¹² A contemporary critic perceptively diagnosed Hegel's remark to constitute an 'indirect rebuke' of the royal constitutional draft of 1815 for not containing 'the system of two chambers'.¹³ In turn, it may equally be seen as supporting bicameralism, which the King (Wilhelm) and government advocated at the time of Hegel's writing in 1817. Yet Hegel only explicitly advocates bicameralism in the lectures and his book from 1820, to which we shall turn now.

In the *Philosophy of Right*, Hegel does not spend much time justifying his choice for two chambers over one. Nor did Eduard Gans, who lectured on the *Philosophy of Right* in Hegel's stead during the late 1820s and edited the book for the first (posthumous) collected works edition in 1833, bother to expand the pertinent paragraphs, even though he made numerous additions to others. This conceals the fact that Hegel distils only the main arguments of one side in a heated controversy while excluding counter-arguments and ideas of alternative mechanisms in circulation at the time. Essentially, he advances two arguments for the institution of two chambers. First, the division of the Estates Assembly into two chambers will lead to improved decision-making and second, there will be less direct opposition between the Estates and the government. I shall now introduce and contextualise these two arguments consecutively.

Decision-Making

The first argument Hegel advances in favour of dividing the Estates Assembly into two chambers is that it will effect an increase in 'the maturity of deciding'. He thus presents bicameralism as an institutional guarantee for deliberate decision-making. The basic idea is that decisions on legislation will be more thoroughly thought through when they have to pass through 'a plurality of *instances*', namely two chambers rather than one (§313). When two separate chambers are involved in legislation, Hegel thinks, 'the contingency of a mood of the moment'¹⁴ and 'the contingency which decision by the majority of the number of votes may acquire' are removed (§313). This was a common concern at the time, expressed, for instance, in almost the same wording by the Romantic

¹² LW, 37. ¹³ [Zahn] 1818, 17. ¹⁴ VPR17, 196.

Adam Müller as a worry about 'the contingent majority of votes of a moment', and a look at other sources discussing the issue helps us to appreciate Hegel's rationale.¹⁵ The basic problem involved is perhaps most lucidly discussed by the Württemberg minister Karl August von Wangenheim, who was widely regarded as having initiated the discussion on bicameralism in the German lands.¹⁶

Wangenheim had first recommended the institution of two chambers for the Estates Assembly of Württemberg in his influential *Idee der Staatsverfassung* (*Idea of State Constitution*) and further elaborated it in a piece entitled *Ueber die Trennung der Volksvertretung in zwei Abtheilungen und über landschaftliche Ausschüsse* (*On the Separation of the People's Representation in Two Chambers and on Estates Committees*). While both publications appeared anonymously in 1815 and 1816, Wangenheim's authorship was an open secret. The latter was also re-printed in the so-called *Europäische Annalen* published by Johann Friedrich Cotta, 'one of the most widely read and influential political journals in Germany at the time'.¹⁷ Mostly forgotten today, Wangenheim's work was widely discussed at the time and we know for sure that Hegel was familiar with it. He explicitly commends the *Idea* in his *Assessment* and fell out with his long-time friend, the rationalist theologian and fellow Württemberger Heinrich Paulus over a malicious review of Wangenheim's works, which Hegel rejected in his capacity as editor of the *Heidelberger Jahrbücher*.¹⁸ The two never made up again and Paulus was among the first critics of the *Philosophy of Right*. Wangenheim, in contrast, later joined the editorial board of the journal founded by Hegel and his associates in Berlin, the *Jahrbücher für wissenschaftliche Kritik* (*Yearbooks for Scientific Critique*).

According to Wangenheim, one of the disadvantages and indeed dangers entailed by deliberation on legislative proposals in one united body of representatives is that everything is decided in one room, on the spot. What he fears is that decisions are thus not taken 'unbiasedly' but under the influence of 'the talent of the speaker' and that rhetoric rather than

¹⁵ Müller 1816, 11. Similar considerations had played a role in discussions about the US political system three decades earlier; see Publius 1788, *The Federalist*, Nos. 62 and 63 [Madison].

¹⁶ The importance of Wangenheim's role is acknowledged, e.g., in [Pölit?] 1819, 94 and Varnhagen [1818] 1984, 63.

¹⁷ D'Aprile and Harker 2016, 71. Siding with Wangenheim, Cotta was the one to propose the introduction of the two-chamber system in Württemberg to the Estates Assembly on 23 June 1815 (*Verhandlungen* 1815, vol. 7, 149).

¹⁸ Paulus 1817a, 1817b. For more detail, see my article on 'Hegel's Intervention in Württemberg's Constitutional Conflict' (Buchtemann 2020a).

reason can swing a vote one way or another.¹⁹ When saying that under such circumstances one may agree to decisions one would not take otherwise, he seems to echo Kant, who in his *Critique of the Power of Judgment* rejected the *ars oratoria* as a 'deceitful art' that 'understands how to move people, like machines, to a judgment in important matters which must lose all weight for them in calm reflection'.²⁰ While Kant's mechanical reference seems to imply the existence of specific levers that the crafty orator may calculatedly put in motion to achieve their desired effect, Wangenheim, Hegel and other participants in the bicameral debate concentrate on their operation through raising tempers. Hegel himself warns against 'impressing with speeches' and is convinced that 'nowhere are more inconsiderate, ill, unjust decisions found than in one chamber'.²¹

In this vein, the complaint that separation into two chambers would unnecessarily prolong proceedings was redescribed as a compliment by the defenders of bicameralism, for 'double deliberation' would prevent precipitance and the rule of passions.²² Following the contemporary worry about 'overhasty laws',²³ the basic problem seen as inherent in a unicameral system may thus be characterised as voting from affect. As the Prussian statesman Baron vom Stein, who was equally concerned about the detrimental effects produced by decisions taken under 'impressions of the moment', put it in a memo to the Grand Duke of Baden, a second chamber won't just be talked into adopting 'the hasty decisions' of the first.²⁴ This is of course exactly what Hegel means when he speaks about the increased 'maturity' of deliberations. In the lectures of 1817/18, he puts it thus: 'An assembly may get carried away by momentary mood. That does not happen so easily with 2 chambers.'²⁵

Besides preventing the occurrence of contingent majorities, Wangenheim was also anxious to counteract the development of an 'esprit de corps' in the negative sense, with deviance being punished and self-interest replacing concern for the common good.²⁶ Needless to say, the all too recent experiences of the French National Assembly provided the vividly present backdrop to these considerations. Stein again expresses

¹⁹ [Wangenheim] 1816, 33.

²⁰ Kant 1790, §53, n. Cited according to the translation by Guyer and Matthews from 2000.

²¹ *VPR*24, 1455. ²² [Hegewisch] 1818, 414. ²³ B[uchholz] 1819, 236.

²⁴ Stein [1816] 1964, 465 [*Eindrücke des Moments*]; cf. *ibid.*, 466 [*Eindrücke des Augenblickes*].

²⁵ *VPR*17, 197.

²⁶ [Wangenheim] 1816, 33 [*Körperschaftsgeist*]; cf. [Wangenheim] 1815, 259 [*Esprit de corps*]. Schlegel 1796 (for instance) explicitly associates 'esprit de corps' (29) with oligarchy as seen in 'the Oriental despotism of castes [or] the European feudal system' (28–29).

the same need to combat 'a spirit of the system'.²⁷ The opponents to Wangenheim's bicameral proposal in Württemberg, on the contrary, argued that only if all those representing the people came together in one chamber, self-interest of the various parties could be overcome. Coexistence in one chamber was thought to further the exchange of ideas and promote common deliberation, leading to increased approximation and cooperation.²⁸ This argument was readily dismissed by other vocal advocates of the two-chamber system, such as the Berlin publicist Friedrich Buchholz, who used his *Journal für Deutschland, historisch-politischen Inhalts* (*Historico-Political Journal for Germany*) as a platform to spread his ideas. Far from conceding any benefit, Buchholz ridicules the notion of representatives convincing and enriching each other's viewpoints by likening a unicameral Assembly to 'a bag filled with rocks' that will smooth each other by continually banging together.²⁹ His specific target is the anonymous author of an article on the 'disadvantages of the two-chamber system', who in turn replied 'once more' in the *Oppositions-Blatt oder Weimarerische Zeitung*.³⁰ Hegel was most likely familiar with these pieces, having excerpted an earlier issue of the same newspaper in the summer of 1819, when he was drafting the *Philosophy of Right*.³¹

Another interlocutor who decisively countered reservations about a lack of exchange of ideas and insight ensuing from separation into two chambers was Franz Hegewisch, the Kiel physician and publicist already encountered in Chapter 2. Hardly by coincidence, his anonymous 1818 article 'On the importance of political forms; especially on the importance of the separation of parliament into two chambers' appeared in Buchholz's *Journal*. Hegewisch's use of the word 'parliament' is unusual for the time, and its spelling with an 'i' indicates its provenance, with Hegewisch working as a translator of political literature from English, notably Thomas Malthus's *Essay on the Principle of Population*.³² Systematically laying out reasons for and against the two-chamber system in his article, he enlists a contemporary commonplace about the representative system to reject the charge of lacking exchange. Hegewisch points out that the public nature of Assembly proceedings must be assumed as a given if a representative constitution is to function properly. Indeed, virtually all participants in the debate agreed on this and 'publicity'

²⁷ Stein [1816] 1964, 465.

²⁸ See for instance Krug 1816, 62; *Nachtheile* 1819, 665; *Nochmals* 1819, 2010.

²⁹ Buchholz 1819c, 235. ³⁰ *Nachtheile* 1819; *Nochmals* 1819.

³¹ See GW22, 34 for Hegel's excerpt from Beilage No. 64 to *Oppositions-Blatt* No. 159 of 7 July 1819.

³² Malthus 1807. Hegel for one mentions 'Parlamente' in later lectures (VPR24, 1443; cf. *ibid.*, 1448).

constituted a routine feature of treatises concerned with the constitutional question.³³ From this circumstance it obviously follows, Hegewisch triumphantly insists, that members of separate chambers possess the means to stay informed of proceedings in the other, just like any member of the general public. Hegel too intrinsically connects ‘*publicity*’ (§314) and, somewhat more ambivalently, freedom of the press (§319) to representation within constitutional monarchy, as will be further discussed in Chapter 5. The fact that he chose the bicameral design for an Assembly envisioned to be ‘lively, mutually informing and convincing, jointly deliberating’ (§309) indicates that he considered the charge of lacking exchange equally negligible. In contrast, he had criticised the form of proceedings in the unicameral Estates Assembly of Württemberg as lacking lively discussion as well as being inefficient and without transparency.

While the Württemberg Estates were adamant in their refusal of the two-chamber system, they accepted some of the misgivings associated with the dynamics acquired by proceedings in a single chamber. To alleviate them, they suggested the so-called *itio in partes* as an alternative mechanism to prevent the development of an esprit de corps and bias against any one Estate within the Assembly.³⁴ The notion derived from political practice in the Old Empire, where the Imperial Diet would sometimes split according to confessional parties in order to prevent decisions on religiously delicate matters from being taken by majority vote and to render them subject to negotiation instead. A similar arrangement seemed to be in place in Weimar at the time, where the government had, in addition to providing for equal numbers of deputies from each Estate, issued permission for a ‘separate vote’ according to Estate or region ‘without separation into chambers’.³⁵ Yet Wangenheim did not consider this provision an adequate remedy for ‘the disadvantage which the deliberation of important matters by *the same persons* united in *one* room inevitably entails’.³⁶ Hegel for his part had portrayed the *itio in partes* as obstructing the course of due political process in his draft known as *The German Constitution*, so it is unlikely that a return to it should have presented an attractive solution to him, or indeed any solution at all.³⁷

As concerns the argument that the existence of two chambers would increase the level of deliberation on legislative proposals, opponents of bicameralism suggested one could achieve the very same effect by

³³ More on this in Chapter 5. ³⁴ See Appendix to [Wangenheim] 1816, 69.

³⁵ Fries 1816, 181. ³⁶ [Wangenheim] 1816, 33. ³⁷ GW5, 199; Hegel 1999, 45–46.

decreeing that any one topic must be discussed repeatedly in separate sessions.³⁸ In Hegel's view, such stipulations are a necessary but not a sufficient condition for guaranteeing the right measure of deliberation. He acknowledges that 'rashness and precipitousness of deciding' is also counteracted by 'necessary regulatory arrangements' such as 'preparation of the matters to be deliberated by commissions of the chamber, repeated submitting, discussing, not deciding quickly etc'.³⁹ In fact, Hegel's comment in the lectures of 1819/20 that 'formalities are of the utmost importance' sounds oddly reminiscent of Hegewisch's article 'On the importance of political forms' published in the *Journal for Germany* in 1818.

Whether or not Hegel read Hegewisch's article, we do not know. Yet they may well have drawn on the same source for inspiration. On the one hand, Hegel was always concerned to maintain the pretence that philosophy was above the practical questions of the day-to-day business of politics. On the other, he stressed the need for regimentation [*nothwendige reglementarische Anordnungen*] in the lectures of 1817/18. He certainly could have found inspiration in this respect in Jeremy Bentham's *Essay on Political Tactics* or its French edition by Étienne Dumont of 1816, which is all about *réglement*. For instance, Hegel also excerpted Samuel Romilly's review of Bentham's *Papers relative to Codification* in the *Edinburgh Review* at the same time and some of this material certainly found its way into the *Philosophy of Right*.⁴⁰ Romilly was a 'close friend' of Dumont and they actually collaborated on a work calling for constitutional reform in Britain in response to the French Revolution.⁴¹ He has also been described as a 'friend' of Bentham,⁴² who encouraged him to draft the *Essay on Political Tactics*.⁴³

For his part, Hegewisch explicitly acknowledges his indebtedness to a German translation of the French edition of Bentham's *Essay on Political Tactics*, Dumont's *Tactique des Assemblées législatives* of 1816. Ludwig Meynier's translation had appeared a year later under the title *Tactik oder Theorie des Geschäftsganges in deliberirenden Volksstän­deversammlungen*. The mediation of Bentham's work by Dumont is significant in the context

³⁸ Appendix to [Wangenheim] 1816, 75.

³⁹ VPR17, 197 [*Die Raschheit und Übereilung der Entschlie­fung*].

⁴⁰ As Waszek 1985 first showed, Hegel drew on [Romilly] 1817 in VPR19, 475 and in PR §211A. Cf. Hegel's excerpt in GW22, 11–17.

⁴¹ Whatmore 2007, 26 and De Champs 2015, 99. The work in question is H. F. Groenvelt [Dumont, Romilly and Scarlett], *Letters containing an account of the late Revolution in France, and observations on the constitution, laws, manners, and institutions of the English* (London, 1792).

⁴² De Champs 2015, 101. ⁴³ Whatmore 2007, 35.

of this chapter because, as Hegewisch points out, it was Dumont who addressed the question of bicameralism rather than 'Bertham', who opposed the two-chamber system.⁴⁴ Due to Dumont's labours in the process of editing and translation, it could be said about the *Tactik* that 'the *pros* and *cons*' of bicameralism were 'nowhere discussed as thoroughly as here'.⁴⁵ Hegel's disciple Eduard Gans for one declared that when he visited Bentham in London in October 1831, shortly before Hegel's death, he knew his works 'only superficially through Dumont's French edition'.⁴⁶ We may reasonably assume that Hegel knew the *Tactique* or *Tactik* in some way or other, too. One factor that makes Hegel's engagement with this work probable is the fact that his student Leopold von Henning published a translation of Thomas Jefferson's *Manual of Parliamentary Practice*.⁴⁷ At publication in 1819, it was the only handbook on the topic besides Bentham's (and Dumont's) work, which, if a review in the influential *Allgemeine Literatur-Zeitung* is any indication, was recognised by contemporaries as the first theory of parliamentary operation.⁴⁸

The Dumont edition of Bentham's *Tactics* was also received enthusiastically by Christoph Heinrich Pfaff who, as a professor of physics at Kiel, was Hegewisch's colleague and another collaborator on the *Kieler Blätter*. There were also several connections between Pfaff and Hegel, born in Stuttgart in 1773 and 1770, respectively. Hegel had gone to school with Pfaff's brother Christoph Burkhard, who died in 1817, and was on friendly terms with his other brother Wilhelm Andreas, who had been a fellow student at the Tübinger Stift and Hegel's colleague at Nuremberg. Professional points of contact were provided by Pfaff's publication in the *Heidelberger Jahrbücher* when Hegel was an editor and by their disagreement over Goethe's theory of colour.⁴⁹ Especially pertinent for the present purposes is their shared interest in Württemberg's constitutional conflict.⁵⁰ In an article from 1817, Pfaff explicitly urged to apply Bentham's (and thus Dumont's) insights to Württemberg and recommends the *Tactik* thus: 'may every German patriot, who is destined to contribute to the political rebirth of his fatherland through the introduction of

⁴⁴ [Hegewisch] 1818, 394, n. ⁴⁵ *Tactik* 1817, 213. ⁴⁶ Gans 1836, 200.

⁴⁷ The original was from 1801. Hegel's library held a copy of Henning's translation (*K* 1160).

⁴⁸ [Pölitz?] 1819, 90f. accordingly recommends Bentham 1817 and Jefferson 1819 in one breath.

⁴⁹ For Hegel's criticism of Pfaff's standpoint, presented chiefly in his work *On Newton's Theory of Colours, Herrn von Goethe's Theory of Colours and the Chemical Opposition of Colours* (Leipzig, 1813), see *GW* 15, 270–76.

⁵⁰ As evidenced by Pfaff's articles on the subject: Pfaff 1815, 1816, 1817.

representative constitutions, draw on this source'.⁵¹ No doubt, one would expect Hegel to have read the article in question, given that he published his own *Assessment* of Württemberg's constitutional conflict around the same time.

One of many possible examples of the convergence between Hegewisch, Hegel and the *Tactik* is provided by the topic of chapter 18 in the latter, 'Of the three debates on legislative bills'. With respect to parliamentary regulations, Hegel particularly stresses 'the provision that a proposition is examined consecutively in several sessions' and mentions '3fold submission'.⁵² Both of these features of proceedings in the British House of Commons are also discussed in Hegewisch's essay, who equally acknowledges them as 'precautionary measures' meant 'to remove the danger of precipitousness and secure the maturity of proceedings'.⁵³ The problem both Hegel and Hegewisch diagnose is that such regulations are liable to becoming compromised and intentionally so. Hegel concedes that exceptions 'may often have to' be made from the rule, to wit in cases considered 'urgente'. The danger is that government may 'arbitrarily' declare any item to be urgent. It is thus exactly 'in such cases' where etiquette is skipped that 'the mood of the moment might do harm if there were not 2 chambers'.⁵⁴

The very same reasoning is to be found in the *Tactik*, which warns of regulations being easily circumvented in unicameral assemblies by the invocation of 'the urge of circumstances'. In contrast, 'forms are more respected when there are two assemblies'.⁵⁵ Hegewisch equally cautions that 'the so-called urge of circumstances' may always be invoked to justify discarding the regulations. On his account, it need not even be the government that does so. A unicameral Assembly might itself decide not to abide by the rules if there was no controlling instance, which results in 'doing all that the dominating party wants'.⁵⁶ Perhaps Hegel was less concerned with this possibility because the challenge could easily be met with the provision of the royal veto. The latter was extolled as a bulwark of the state by those who considered a second chamber superfluous,⁵⁷ yet there was no reason why one could not have both.

With the usual regulatory mechanism suspended in cases of urgency, Hegel is particularly concerned to prevent the contingency involved

⁵¹ Pfaff 1817, 165. In fact, Bentham in turn followed developments in Württemberg, as his papers show (Bentham MS Box 129, 723; MS Box 111, 18 and 97).

⁵² *VPR*9, 569; *VPR*17, 197. ⁵³ [Hegewisch] 1818, 415. ⁵⁴ *VPR*17, 197.

⁵⁵ Bentham 1817, 40. ⁵⁶ [Hegewisch] 1818, 416.

⁵⁷ See the idea of a 'dam of the state' discussed below.

in majority decisions, where individual votes suddenly receive immense weight. Hegel's awareness that the same problem may still occur within any one chamber of a bicameral system is demonstrated by his invocation of a case in British Parliament, where one Lord's vote made the decision in a deadlocked situation. In such cases, the other chamber must act as a corrective, and that works in both directions. In Hegewisch's words, the two chambers function as 'bridles' on each other.⁵⁸ This very imagery was used by Dumont in the *Tactik*, where it is enhanced by the metaphor of the two chambers as two anchors for the ship of state.⁵⁹ This, however, is only possible when both chambers are on an equal footing and possess the power to stop legislation single-handedly, as it were.

Indeed, Hegel seems to be very careful not to imply any hierarchy of chambers and generally avoids all talk of upper and lower houses, declining to give a name to his two chambers at all.⁶⁰ While the early lectures contain references to a first and second chamber,⁶¹ in the *Philosophy of Right*, Hegel speaks of 'the first estate' (§308) and 'the first part of the estates' (§310) as well as 'the second estate' (§313) and 'the second part' (§310) instead. This delineation seems to be of a purely numerical character, with both chambers on a par in respect of their legislative power, each serving as a court of appeal to the other. That both chambers should possess the power to veto legislative proposals is crucial. As Hegel emphasises in the lectures: 'No chamber may thus be outvoted.'⁶² He draws this lesson from the history of both the Old Empire, where the College of Towns could jointly be overruled by the Electors and the College of Princes, and France, where the third estate was easily outvoted by the first two. Dumont adduces examples from Denmark and Sicily to the same effect.⁶³

According to Hegel, the mere existence of another chamber with veto power seems to guarantee an adequate level of deliberation. With each entity holding the power to veto proposals, they will be considered more carefully and often repeatedly. In this way, Hegel expects the institution of two chambers to diminish the measure of contingency involved in state affairs, which is a recurrent aim of his state theory. In a bicameral system, as Hegewisch puts it, one chamber will hold the other to the rules, acting

⁵⁸ [Hegewisch] 1818, 417. ⁵⁹ Bentham 1817, 41, 43.

⁶⁰ I have located only one mention of an 'upper chamber', which may even be the transcribing student's term rather than Hegel's own (*VPR*17, 199).

⁶¹ See *VPR*17, 199f. My own use of the terms 'first chamber' and 'second chamber' is simply numerical too, following Hegel's differentiation of first and second Estate.

⁶² *VPR*17, 197. ⁶³ Bentham 1817, 43.

'like a court of appeal'.⁶⁴ Once more, this is taken straight from Dumont.⁶⁵ The same imagery is invoked by Hegel in his lectures, referring to the multiple instances established in the case of 'courts and government agencies' and likening the respective other chamber to 'a higher instance' as found in the legal system.⁶⁶ Trying to garner support for his position, Wangenheim had invoked the same analogy, too. As he elaborates, legal disputes are commonly 'examined and decided by more than one instance, that is by different persons and at different times and in different places [*Räumen*]'. Rhetorically, he asks whether the adoption of new laws was less important than a lawsuit and therefore justified lesser care or effort, or whether an Estates Assembly had been endowed by God with 'the *privilegium exclusivum* of higher insight, prudence and impartiality'.⁶⁷ Hegel equally stresses that what is at stake is far from trivial matters but indeed 'the most important, that is the general affairs of state'.⁶⁸

Other advocates of bicameralism disagreed with the notion that each chamber should hold the power to veto proposals, both having the same rights and duties. The Rhenish publicist Johann Friedrich Benzenberg, for instance, considered concurrence of one chamber with a governmental proposal sufficient for its acceptance as law. Following Hegel's reasoning, this would relegate to the problem of a simple majority. Ludwig Wieland, publicist and son of the renowned writer, called out Benzenberg on exactly that point, arguing that such a system provided the government with 'decisive preponderance'.⁶⁹ Still, this shows that much variety lay in the details, even among those who were in basic agreement on the desirability and, indeed, necessity of a two-chamber system.

In summary, the first argument that Hegel advances in favour of bicameralism, and which he shared with many of its advocates, may be described as 'the principle of separate concurrence'. I am borrowing the term from Jeremy Waldron, who derives it from an analysis of John Stuart Mill's thoughts on representation.⁷⁰ For illustration, he invokes (fictional) habits of twofold deliberation described by Tacitus and Laurence Sterne, namely the sober and intoxicated councils of the ancient inhabitants of *Germania* and Walter *Shandy's* 'beds of justice'.⁷¹ Although Hegel did not adduce these anecdotes to support his argument, he too was familiar with

⁶⁴ [Hegewisch] 1818, 416.

⁶⁵ Bentham 1817, 40.

⁶⁶ VPR17, 196. Cf. VPR19, 569.

⁶⁷ [Wangenheim] 1816, 34.

⁶⁸ VPR17, 196.

⁶⁹ Wieland 1816, 438.

⁷⁰ Waldron 2012, 43.

⁷¹ Sterne 1762, chapter 17; Tacitus, *Germania*, chapter 22.

them.⁷² Beyond mere separate concurrence, however, Hegel and numerous contemporaries considered it important that deliberation on legislative proposals not only take place repeatedly but involve different bodies of people. The question of composition of the two chambers thus figured largely in the debate and will be discussed next.

The Need for Mediation

The second argument Hegel presents in support of the two-chamber system is that 'one of the moments' contained in the Estates fulfils 'the characteristic function of mediation' in the sphere of politics. As we shall see, this describes the first chamber's quality as a mediator between the people and the government. Compared to the first argument, this one holds more weight for Hegel, who invokes it as the main reason for separation into two chambers in §312 of the *Philosophy of Right*. In later lectures, he adds that all considerations of 'harm, utility etc' pale in comparison to the problem of mediation.⁷³ Successively, I shall now introduce the problem of mediation and explore its relation to the argument for bicameralism with reference to the contemporary debate. Before answering the question of why the first chamber should be particularly suited to fulfil the task of mediation, its alleged necessity will be addressed.

In §302 of the *Philosophy of Right*, Hegel explains that the Estates function as 'mediating organ' between 'the government in general on the one hand and the people dissolved into the particular spheres and individuals on the other'. Acknowledging the logical dimension, with Hegel parenthesising the 'syllogism' in §304, one could also say they mediate universality and individuality.⁷⁴ The Estates thus combine what Hegel describes as a governmental disposition with particular interests and prevent government and the people from facing each other as isolated extremes. The importance of the mediating function is highlighted by the fact that Eduard Gans considered it appropriate to insert the following sentence into Hegel's book: 'The constitution is essentially a system of

⁷² Volumes one to six of Sterne's novel formed part of Hegel's library (*K* 735; edition Altenburgh, 1772). Like any educated man of his time, he knew his Tacitus and explicitly refers to 'his famous portrait of Germania' in *VP*G, 419.

⁷³ *VPR*24, 1455.

⁷⁴ On the syllogism, see *E* §§128–40; Hegel 1827, 1830, §§181–93. For more detail on this point, see Bellamy 1986.

mediation.⁷⁵ On the one hand, mediation is advanced by ‘*the governmental power*’, or the executive, which contributes its ‘knowledge’ of general affairs and state power to the legislative power as ‘advisory moment’ (§300). On the other, a part of the Estates must ‘exist essentially as the moment of the middle’, mediating between the two extremes of monarchical power and the people (§304).

The need for mediation is a crucial concern for Hegel because he conceives of the various elements of the state as ‘*a single individual whole*’ (§272), rejecting the notion of a ‘hostile’ relation between them.⁷⁶ As discussed in Chapter 3, Hegel’s main concern is that the state should form an integrated organic unity that embodies cooperation rather than strife. Accordingly, he objects to the dualistic view that posits the people as fundamentally opposed to the prince.⁷⁷ The mistake contained in this conception, which Hegel elsewhere designates ‘a device of ill will’, is to act ‘as if the people was the whole’.⁷⁸ On Hegel’s organicist view, however, the people and the prince firmly belong together, to such an extent that it is impossible to conceive of a people proper without a monarch, for the latter provides a society and its members with unity. As ‘*representative of his people*, [the] *whole* lives in him and acts from him’.⁷⁹ In tones reminiscent of Hobbes, Hegel finds that in itself, a people is nothing but a ‘formless mass’, a multitude of individuals whose activity is ‘elemental, irrational, savage and terrible’ (§303A). It is only through the individuality of the monarch that ‘a people becomes *one* people’.⁸⁰ Sovereignty, according to Hegel, resides not in the people but in the state itself, and since it must ideally be personated by one individual, a people without a monarch cannot constitute a state (§279&A). Ultimately, to think of the regent and his officials in strict opposition to the Estates Assembly is futile because all of them are representatives of the people.⁸¹

In the remark on §302 of the *Philosophy of Right*, Hegel addresses the ‘frequent but highly dangerous prejudice[s] to think of Estates mainly

⁷⁵ Hegel 1952, 412. The quote is usually taken for Hegel’s own, with all the standard editions of *PR* including it unquestioningly as §302Z (Hegel 1986a, 1991, 2008) and thus frequently cited by commentators (recent examples are Boldt 2000, 192; Schnädelbach 2000, 319; Yeomans 2017, 484). Yet neither the critical edition of the lectures nor the original *Philosophy of Right* from 1820 contains it. When editing the book for the first collected works edition in 1833, Gans must have added the sentence of his own accord. In *VPR17*, 120 the expression ‘system of mediation’ is used to describe the role of estates in civil society, relating individuals and collective.

⁷⁶ *VPR18*, 317. Cf. *PR* §301Z.

⁷⁷ Without much analysis, Mommsen 2006, 413 refers to the ‘dualistic doctrine’ as a standard in early ‘liberalism’.

⁷⁸ *VP*G, 67. ⁷⁹ *E*, 489. ⁸⁰ *VPR18*, 315. ⁸¹ Hegel makes this explicit in *VPR17*, 175.

from the point of view of *opposition* [*Gegensatzes*] to the government, as if this was their essential position'. In accordance with his vision of 'the organic state' (§302), he calls it 'one of the falsest opinions' to think of the legislative power as opposed to the government⁸² and alerts his readers to the difficulty of drawing a strict line between the tasks of executive and legislative (§299A). Hegel equally dismisses the imputation of ill will to the government as the 'viewpoint of the rabble' (§301A). To be sure, Hegel acknowledges the Estates' capacity for '*hostile* opposition' to the monarch (§304), plenty of which he had witnessed in Württemberg's constitutional conflict. Yet he disagrees with elevating such an 'irrational relation' into normality.⁸³ To Hegel, the fact that King and Estates opposed each other as 'abstractions' and entered an 'alien relationship' through their negotiations as opposite parties constitutes a moral as well as a political failure.⁸⁴ In his view, the Württemberg Estates had miserably failed to fulfil the task of mediation. Defending their own privileges, they had acted as an extreme, not as a mediator.

This does not mean that Hegel rejects all forms of opposition. In the lectures of 1817/18, he even refers to the need for opposition in the Estates Assembly as 'a necessary moment'.⁸⁵ In the *Philosophy of Right*, Hegel shows himself unworried by minor squabbles concerning 'more specific and indifferent matters' such as 'factiousness' in the competition for offices. In such cases, the opposition between government and the Estates is a mere 'semblance'. What he is concerned about is when 'conflict' concerns the foundations of the state and produces 'a substantial opposition' between the people dissolved into a mere multitude and the monarch. Were the princely power and the Estates to face each other as extremes, they would jeopardise organic unity and 'the state would be in demise' (§302A). This drastic choice of words, if nothing else, alerts the reader to the crucial role played by mediation, which, inspired no doubt by recent events in France, is intended to reduce the likelihood of such developments occurring. The constitutional system Hegel proposes is meant to forestall worrisome opposition between the people and their government by grounding them in the 'rational relation' that consists in '*mediation*' (§304).

As in the case of improved decision-making, Hegel was far from the only one to diagnose the problem of mediation, which enjoyed widespread

⁸² VPR17, 189. ⁸³ VPR19, 568. ⁸⁴ E, 477.

⁸⁵ VPR17, 193. Cf. VPR17, 205; VPR19, 424; LW, 67.

recognition at the time.⁸⁶ He was commended for his portrayal of the people and government as ‘an essential and original *unity*’ in his *Assessment* of Württemberg’s constitutional conflict by the Kiel professor and Danish state councillor Erich Berger, who agreed that they should not be viewed as antagonists [*Contrahenten*] and rejected the possibility of ‘*enmity*’ between them.⁸⁷ The position of Jakob Friedrich Fries in his 1816 book *Of the German Federation and German State Constitution* makes for an interesting case, not least because he was Hegel’s long-time professional rival and personal enemy.⁸⁸ In ostensibly the exact manner that Hegel ascribes to the rabble, Fries diagnoses a fundamental tension between ‘public spirit and princely power [*Herrschergewalt*]’ and proclaims that ‘the interest of the people is opposed to that of the government’.⁸⁹ Yet his addition that ‘both demand reciprocal accommodation’ calls into doubt the impression that there is really all that much difference to Hegel’s position. After all, Fries’s assumption of opposition leads him to the same conclusion as Hegel, the necessity of ‘estate-based mediation’.⁹⁰ The crucial difference lies in their recommendation on how best to achieve it. The circumstance that Fries does not advocate the separation of popular representation highlights the fact that acceptance of the need for mediation among contemporaries did not necessarily entail support for bicameralism.⁹¹ One could of course subscribe to the diagnosis of the problem while advocating a different solution to it. One could wish for harmony without longing for a two-chamber system.⁹²

Nonetheless, the notion of mediation had become so firmly associated with bicameralism that refusal to recognise the need for mediation often amounted to a rejection of the two-chamber system. Many opponents of bicameralism agreed with Paulus, Hegel’s (former) friend and adversary of Wangenheim, who held that the relation between two opposing parties would only be complicated by adding a third.⁹³ Arguably, one could even invoke the argument about mediation to make the case for bicameralism

⁸⁶ Boldt 1975, 131 describes mediation [*Vermittlung*] as a keyword of the period 1815–48.

⁸⁷ Berger 1819, 26. Cf. *LW*, 60.

⁸⁸ Paulus mentions Fries’s lectures on constitutional law [*Staatsrecht-Lesen*] at Heidelberg in a letter to Hegel from 28 May 1816 (*BII*, 77); later that year, Hegel filled the chair vacated by Fries’s move to Jena.

⁸⁹ Fries 1816, 159, 154. Hegel directly counters this in *LW*, 41: ‘the opinion that what happens in the interest of the government and the state was against the interest of the people distinguishes the rabble from the citizens’.

⁹⁰ Fries 1816, 155. ⁹¹ See Fries 1816, 180f.

⁹² As do, for instance, [Varnhagen] 1818, 56 and *Nachtheile* 1819, 1674.

⁹³ Paulus 1817a, 51, 64.

by implication. In his Württemberg commentary of 1817/18, Hegel himself insisted that the whole purpose of an Estates Assembly is to act as 'the mediating organ between prince and people' without explicitly connecting it to the two-chamber system.⁹⁴ Hegel leaves the reader in no doubt about the fact that the Württemberg Estates had miserably failed at mediation yet does not use this opportunity to advocate the introduction of a bicameral system outright. In the lectures of the same year and in the *Philosophy of Right*, however, Hegel enlists the argument about mediation in support of bicameralism.

The works of numerous authors had entrenched the connection between mediation and bicameralism. The crux of the argument is that only one of the chambers, that composed of noble members who stand between the monarch and the people, is able to play the role of mediator successfully. This way of thinking had a long pedigree in a whole tradition, originating in Britain, concerned with what is commonly called the balanced constitution, which postulated a balance between legislative and executive as necessary for the maintenance of political liberty. The 'classical theory of mixed government of the English constitution' advocated a system of checks and balances, conceiving of government as a combination of monarchy, aristocracy and democracy, represented by the King, House of Lords and House of Commons, respectively. Within this system, the House of Lords played an especially important role because it was seen as responsible for the maintenance of balance, serving 'as the equipoise of the constitution'.⁹⁵ The nobility was thus seen as fulfilling a crucial political role and its institutionalisation in a separate chamber was hardly questioned.

A very similar line of reasoning was applied in the German constitutional debate after Napoleon, as it had been in France, albeit rather detached from a strict separation of powers as elaborated by Montesquieu and the concomitant notion of checks and balances.⁹⁶ Echoes of the 'balanced constitution' are readily identifiable in the works of Wangenheim, the initiator of the German debate on bicameralism, which seem to provide the best starting point for an exploration of the connection between mediation and the two-chamber system. Like Hegel,

⁹⁴ *LW*, 80.

⁹⁵ Weston 1965, 1, 3. See Skinner 1974, 122 for Bolingbroke's influential formulation in his *Remarks on the History of England*. Hegel may have accessed that work during his time in Bern (see Waszek 1988, 286). That he was familiar with Bolingbroke's work is indicated by the fact that his own library contained *On the Study and Use of History* (K 983).

⁹⁶ On the French debate, see De Dijn 2005b.

Wangenheim had emphatically cautioned against 'the demise of the state', should the relation between the Estates and the government not be mediated.⁹⁷ Conceiving of the state as composed of three distinct elements, he portrays the forces of what he calls democracy and autocracy as involved in something approximating eternal struggle, which can only be alleviated by the intervention of the aristocracy. To illustrate the point, Wangenheim enlists the image of a family, comparing prince to father, people to children and nobility to mother, attributing to them a driving, retarding and mediating function, respectively. Another metaphor Wangenheim uses to describe the task of the aristocratic element is the 'hypomochlion', a concept borrowed from physics that refers to the pivotal point of a joint or lever; it would bring the other two powers into 'an oscillating equilibrium'.⁹⁸

Transferred to the level of political institutions, Wangenheim advocates the separation of the so-called democratic and aristocratic elements within the state, pleading for separate chambers, composed of elected representatives of the people, on the one hand, and unelected representatives of church and nobility, on the other. Combined in a unified Assembly, these two 'classes of people' with opposing interests would merely end up in a struggle for dominance. In a chamber of their own, however, the aristocracy will be able to act as a '*terminus medius*' between the people and their prince.⁹⁹ Commending the British House of Lords for its members' disposition towards truthfulness and unbiased judgement, Wangenheim suggests the introduction of an upper house according to the British model, composed of landed noblemen, clergy and scholars. Such a 'maintaining and mediating upper house', he reasons, will keep the state in balance.¹⁰⁰ At bottom, he maintains that without mediation by an upper house, the balance will be disrupted and the state be out of joint, as it were.

Although Wangenheim conceives of the separation of popular representation as 'an organic institution' designed to minimise struggle, it clearly echoes a mechanistic conception of the state at odds with Hegel's plea for organicism.¹⁰¹ Still, considerable similarities may be detected between their accounts in regard to the idea of mediation. Hegel too insists that rather than all of the Estates, only 'one of the moments has the characteristic function of mediation within this sphere' (§312). It thus answers to the call for a 'moment of the middle', just like the government

⁹⁷ [Wangenheim] 1816, 11. The need for mediation is also clearly stated *ibid.*, 22.

⁹⁸ [Wangenheim] 1815, 137.

⁹⁹ [Wangenheim] 1816, 31 [*Volksklassen*], 36.

¹⁰⁰ [Wangenheim] 1815, 236.

¹⁰¹ [Wangenheim] 1816, 11.

or ministry does on behalf of the princely power (§304). While one chamber ‘remains as extreme’ vis-à-vis the government, the other ‘forms the element of mediation’ ‘between what is called the people and the princely power’.¹⁰² The overall aim is to ensure unity and prevent isolation of the various elements within the state organism; therefore, Hegel signals, it is rational that there should be two chambers with one of them serving as mediating element. For if a unicameral Assembly was to reject a legislative proposal, it would appear as directly opposed to the government and thus ‘tension, hate and friction’ would ensue.¹⁰³ While the opponents of bicameralism argued that the very introduction of two chambers in Nassau, Bavaria and Baden had only aggravated ‘frictions’, other advocates shared Hegel’s view.¹⁰⁴

In the event of real opposition, Hegel maintains, either the government would have to be disposed of or the Assembly dissolved. Neither is a viable option as ‘the latter would appear as an infringement on the freedom of the people, and the former would endanger the existence of the state’.¹⁰⁵ Once again, the French Revolution had just set a warning example and all too impressively demonstrated the danger of direct opposition between the princely power and the people’s representation in one body.¹⁰⁶ The existence of two separate chambers helps to avoid this dilemma, as Hegel explains in §313 of the *Philosophy of Right*. With two chambers, the Estates are ‘less likely to be in direct opposition to the government’, because the first chamber may relativise the position of the second, or alternatively add gravity to it. If the two chambers were in disagreement, they would be seen as in opposition only with each other, not with the government. When they agree, the position of the second Estate ‘appears more impartial and its opposition neutralised’ through the support of ‘the mediating moment’ (§313). This directly contradicts reproaches of a second chamber’s irrelevance, condensed in a quotation that is commonly attributed to Sieyès and much repeated in the literature on bicameralism: ‘if a second chamber dissents from the first, it is mischievous; if it agrees it is superfluous’.¹⁰⁷

Based on this understanding of the idea of mediation and its mobilisation in the advocacy of bicameralism, it may next be explored why Hegel and many of his contemporaries thought that one of the chambers would

¹⁰² *VPR*19, 569. ¹⁰³ *VPR*17, 198.

¹⁰⁴ *Nachtheile* 1819, 1673. For instance, [Buchholz] 1819b, 478 is with Hegel. ¹⁰⁵ *VPR*17, 198.

¹⁰⁶ According to *VPR*9, 570, the French Revolution had demonstrated just how ‘pernicious’ that ‘relation’ was [*das Verderbliche dieses Verhältnisses*].

¹⁰⁷ Waldron 2012, 37. Hegewisch 1818, 420 misleadingly enlists Sieyès among the supporters of the two-chamber system. For the latest discussion of ‘Sieyès versus Bicameralism’, see Rubinelli 2019.

make for an especially good mediator. The key lies in its composition, which distinguishes it significantly from the other chamber, and was thought to entail certain qualities that rendered it particularly suited to performing the task of mediation. While designs for its exact composition varied considerably, the general idea was to distinguish it from the other chamber by populating it with non-elected members.¹⁰⁸ The members of Hegel's first chamber derive from 'the estate of natural ethical life', which is based on 'family life' and 'land ownership' (§305). Resembling the hereditary monarch in terms of their 'natural determination' (§305), these persons are essentially destined for a career in politics, being both 'called and *entitled* to it by *birth* without the contingency of election' (§307). Kant too had drawn the 'analogy' between succession to the throne in a hereditary monarchy and inheritance of a majorat.¹⁰⁹ This was a common tenet at the time, according to Berger and to Buchholz, who maintains that the throne 'necessarily becomes a majorat in a hereditary system'.¹¹⁰ In Hegel's view, members of the first chamber are qualified for their 'political position and significance' by the independence derived from their '*inalienable hereditary property* burdened with the majorat' (§306). With reference to the contemporary debate, these characteristics will be discussed in turn now.

Land Ownership and the Majorat

The second, or in Hegel's constitutional design first, chamber was commonly thought to provide an element of stability, which crucially relates to its members' land ownership in Hegel's account. This is reflected in his characterisation of the first estate as 'the substantial estate' (§203 and §307) in direct contrast to 'the *moveable* part of *civil society*' (§308), which is concerned with trade, industry and commerce. Figuratively, Hegel maintains that 'the two estates are different like something solid and something moveable'.¹¹¹ The significance of these characterisations is elucidated by contemporary sources that employ the same idiom and differentiate a territorial from a mobile principle within the state.¹¹² The distinction is perhaps elaborated most impressively by Hegewisch's

¹⁰⁸ See Stolleis 1992, 112. ¹⁰⁹ Kant [1798] 2009, 197.

¹¹⁰ Berger 1819; [Buchholz] 1819a, 533. ¹¹¹ *VPR* 19, 568.

¹¹² E.g., Koppe 1816 and Wieland 1816, who add a third, intellectual principle. Note that both oppose bicameralism.

brother-in-law, the historian and publicist Friedrich Christoph Dahlmann, in his 1815 article entitled 'A Word on Constitution'.

In former times, Dahlmann explains, society was completely ordered on the basis of the possession and cultivation of land. With the rise of towns, however, 'a second, entirely different, mobile [*bewegliches*] life' emerged, which brought about 'trade and change'. The rising towns and the owners of 'changeable [*wandelbare*] landed property' gained political power and, at least in England, where these developments took place earlier than on the continent, formed a chamber in opposition to 'the knightly holders of unsaleable fiefdoms'.¹¹³ It thus emerges that the characterisation of the second estate as 'moveable' has a literal meaning, because its members are free to move both their person and their property, which is impossible for the holders of inalienable landed property. Even if they acquired land, members of the second estate were not bound to the ground as they could freely dispose of it at any time. In their case, it is adequate to speak of 'moveable, free landed property'.¹¹⁴

These aspects are clearly present when Hegel refers to 'the moveable and changeable element of civil society' (§310). In direct contrast, he explains in the lectures of 1819/20, the first estate is 'excepted from movability' and 'excepted from changeability'.¹¹⁵ Members of the first estate are 'firmly tied to the land', which may refer to both the soil they own and their polity. As Hegel points out, the ownership of inalienable property makes it difficult to emigrate.¹¹⁶ For these reasons, I think Nisbet's translation is somewhat misleading at §308 and §310 of the *Philosophy of Right*. While Knox retains the 'mobile' aspect, Nisbet's limited description of the second estate as 'changing' and 'variable' misses the literal sense of *beweglich*, lacking the crucial component of movability.

The first estate's link to the ground also emerges in their characterisation as consistent and unchanging as well as firm, solid, permanent and stable.¹¹⁷ On the one hand, this expresses the dependence of their livelihood on nature. Yet Hegel's description of the first estate as constituting 'the persistent' [*das Beharrliche*], or that which is [*das Seyn*], may also refer to its members' political stance.¹¹⁸ The lecture transcript by Gustav Hotho from 1822/23 intimates that much, registering that the first estate is 'more inclined to subservience'.¹¹⁹ Revealingly, Eduard Gans added the half-sentence 'the second estate more

¹¹³ Dahlmann 1815, 270. ¹¹⁴ Dahlmann 1815, 272. ¹¹⁵ *VPR*19, 565, 568.

¹¹⁶ *VPR*19, 568.

¹¹⁷ Thus *VPR*19, 565: 'das Feste, Gleichbleibende überhaupt/das Feste Gleichbleibende Moment'.

¹¹⁸ *VPR*19, 568. ¹¹⁹ *VPR*22, 968.

to freedom' in the 1833 edition of the *Philosophy of Right*.¹²⁰ At the time, the juxtaposition of a driving lower chamber and a retarding upper chamber, as encountered in Wangenheim's simile of the family above, was a commonplace, certainly not without debt to the tradition of the mixed constitution. The notion that the first chamber would provide a crucial element of stability was widespread and even used by *The Federalist* in a context where no nobility existed.¹²¹

In the German context, even those who rejected the separation of popular representation into distinct chambers appreciated the British House of Lords as effecting a 'vis inertiae', which lent stability to legislation by blocking a substantial share of proposals made by the Commons.¹²² The role of an upper house was thus seen as providing 'the restraint of the machine of the state' necessary to prevent it from moving too fast and eventually collapsing.¹²³ The same connotation is involved in the metaphor of an upper house as a dyke that will tame the floods of agitation and save the state from destruction.¹²⁴ Opponents of bicameralism rejected this identification but employed the same imagery, insisting that 'the [royal] veto is the true dam of the state, but not the first chamber'.¹²⁵ Recent scholarship has found that, historically, upper chambers did indeed have a retarding effect, constituting a 'conservative block' in practice.¹²⁶ In this sense, it seems justified to speak of Hegel's first estate as 'conservative' too.¹²⁷

The reason for the prime importance attached to wealth in the form of land rather than moveable property is thus to be found in its character as a more stable, reliable source of wealth. To further guarantee the continued existence of large landholdings, Hegel recommends that they be rendered 'inalienable' and subject to the institution of the majorat (§306). According to Johann Heinrich Zedler's *Universal-Lexicon aller Wissenschaften und Künste* (*Universal Encyclopedia of All Sciences and Arts*), the latter is a specific form of entail in which the oldest among the most closely related male members of a noble family inherits all of the hereditary lands [*Stammlande*] as single heir and is unable to sell them, divide them or alter the mode of their inheritance.¹²⁸ Nisbet's and Knox's

¹²⁰ Hegel [1833] 1952, 283; 1991 and 2008, §203Z.

¹²¹ Publius 1788, Nos. 62 and 63 [Madison]. ¹²² *Von den Ideen* 1815, 132.

¹²³ Benzenberg 1816, 228. Hegel of course disagrees with the mechanistic metaphor, as seen in Chapter 3.

¹²⁴ B[uchholz] 1819c, 234; Berger 1819, 58 (paraphrasing a speech by a Bavarian state councillor).

¹²⁵ *Nachtheile* 1819, 1666. ¹²⁶ Stolleis 1992, 112.

¹²⁷ Yeomans 2017, 483 does so, for instance. ¹²⁸ Zedler 1739, 629–30.

substitution of 'primogeniture' for Hegel's *Majorate* in §306 of the *Philosophy of Right* is imprecise because it was not necessarily the first-born son who would inherit; it could, for example, be his uncle. Justus Friedrich Runde in his 1806 *Grundsätze des gemeinen deutschen Privatrechts* (*Principles of the Common German Private Law*), which formed part of Hegel's library, explicitly distinguishes between primogeniture, majorat, seniority and minorat, while admitting that they have frequently been confused.¹²⁹ What all of them have in common is the concentration of a family's entire hereditary lands in the hands of one person.

Originally, majorats were founded freely, subject to princely approval, with the intention of securing the *splendor familiae*. Hegel judiciously defended the institution of the majorat at a time when it was attacked for being at odds with ideas associated with enlightenment. Morally, it contradicted notions of equality and freedom; and from an economic perspective, it was perceived to promote stagnation and prevent the development of a free market.¹³⁰ In 1776, Adam Smith, with whose work Hegel was very well acquainted, wrote that 'in the present state of Europe ... nothing can be more completely absurd' than entails.¹³¹ About thirty years later, the *Code civil* abolished the practice of entailment throughout large parts of Europe, but Napoleon soon re-introduced it.¹³² After the demise of his empire, discussion on the subject resumed, and criticism from a social perspective was on the rise. In the German context, this is indicated by the literary work of E. T. A. Hoffmann and Achim von Arnim, who both published novellas engaging with the topic in 1817 and 1820, respectively. *Das Majorat* and *Die Majorats-Herren* vividly impress upon the reader the sense that 'the majorat seemed to bring little blessing', as Arnim – who was personally affected by such an arrangement – puts it in drastic understatement.¹³³ Both writers chronicle greed, envy, treachery, personal tragedy and the ruin of entire families as the natural consequences

¹²⁹ Runde 1806, 622 (§666); also cited in Hegel 2015c, 553 (–GW14,3). This work is listed in the auction catalogue of Hegel's library: K 1190. It is the fourth edition of Runde's book; the first had appeared in 1791.

¹³⁰ Riedl 1992, 45ff.; Bayer 1999.

¹³¹ Smith 1776, vol. 1, 467–68 (*The Wealth of Nations*, Book III, Chapter 2). The four-volume Basel edition of 1791 formed part of Hegel's library: K 239–42. Hegel explicitly mentions Smith alongside Say and Ricardo in *PR* §189A and uses Smith's well-known example of the pin factory to illustrate the division of labour in *VPR*17, 111. See Waszek 1988 on Hegel's reception of the Scottish Enlightenment; Oz-Salzberger 2013 for broader background; Herzog 2013a for a deliberately non-contextual analysis.

¹³² *Code civil* 1804, Art. 896. In France, the revolutionaries had already abolished entails. Napoleon reintroduced the majorat in 1807.

¹³³ Arnim 1820, 22. On Arnim's plight, see Riedl 1992, 23.

of the institution recommended by Hegel. It emerges from their portrayal as a hopelessly outdated societal arrangement of which no good can come.

Remarkably, Hegel advocates the majorat even though he agrees with criticism of this institution from a social point of view. Echoing Hoffmann's and Arnim's conclusions, he admits that entailment 'introduces a bad, unfree spirit (of old nobility, patrician)'.¹³⁴ In the private domain, Hegel clearly states that 'the institution of the law of inheritance' both 'violates the principle of the freedom of property' and 'is based on an arbitrariness' that can hardly be tolerated (§180A). He considers it not only unfair but indeed unethical to exclude some children from inheritance in favour of others. In this context, he invokes the excessive legacy hunting among the Romans as satirised by Lucian and Juvenal,¹³⁵ and in the lectures also refers to similar problems in England. Leading to competition for inheritance and rendering heirs dependent on the whims of their forebears, the 'arbitrariness' involved in drawing up a will may easily entail the 'violation of ethical relations' (§179A). Hegel goes as far as to say that there is no injustice in violating a will, which signifies the mere breaking of the power to 'tyrannise others even after death'.¹³⁶ As family property is shared (§178), the children have a rightful claim to inheritance and to stick to an unjust will would be mere 'piety'.¹³⁷

In what seems a rare moment of female emancipation, Hegel insists on the equal entitlement to inheritance for women. He and his own two siblings, Ludwig and Christiane, had shared their inheritance fairly equally, with the sister receiving 'a bit more since she had not had the opportunity for any higher education'.¹³⁸ Hegel also asserted women's right to property (§171) and was anxious to secure for them a share of the family assets in case of divorce or death of husband (§172A). Accordingly, he was greatly opposed to Roman inheritance law but praised 'the laws of Solon [which] have wisely ensured to preserve the equality of inheritances'.¹³⁹ In the

¹³⁴ *VPR*8, 294.

¹³⁵ Lucian is mentioned in *PR* §180A, Juvenal in *VPR*17, 93. Hegel may particularly have been thinking of Juvenal's *Satire XII* and Lucian's *Abdicatus* (*The Disinherited*), which was contained in his library in Greek and Latin (Lucian 1790: *K*454) and translated into German by C. M. Wieland in 1798, 259–93.

¹³⁶ *VPR*24, 1304. ¹³⁷ *VPR*19, 451.

¹³⁸ Pinkard 2000, 83. Hegel's views on 'the natural determinacy of the two sexes' (*PR* §165) feature in Chapter 5.

¹³⁹ *GW*2, 22–23 (the source is an early manuscript on legislation from the late 1790s). In contrast, e.g., to Meiners 1788 (Preface), who argues against women's inheritance and for a return to Roman laws of inheritance. Hegel discusses the latter in some detail in *VPR*17, 93. The quotation from Gellius in *PR* §3A mentions the *lex Voconia* too.

private realm, Hegel considered the practice of making testaments admissible only where no wife, husband or children were left behind.

Notwithstanding these strictures on inheritance in the realm of the family, Hegel advocates the institution of the majorat for political reasons, admitting that 'the right of the majorat may be introduced in the interest of the constitution'.¹⁴⁰ The underlying idea is that the majorat affords the members of the first chamber complete independence, thus ensuring that the best interest of the state is served. At the same time, it guarantees the endurance of such unqualified independence and thus helps to overcome 'contingency'.¹⁴¹ For this reason, politics require the institution of a 'law of primogeniture' and the stringent entailment of resources [*ein eisernes Stammvermögen*] (§180A). Although 'an injustice' from the viewpoint of the family, the majorat is a 'political necessity'.¹⁴² This apparent bifurcation of ethics and politics recalls Hegel's understanding of the state as something beyond instrumental value.

While the totalitarian interpretation certainly runs counter to Hegel's aspirations, he does demand dedication to a rational higher good and has long inspired the communitarian tradition. In his discussion of external sovereignty, he asserts that 'the interest and right of individuals [is] posited as a vanishing moment' (§324). That means that in extreme cases, such as war, everybody holds 'the duty to maintain . . . the independence and sovereignty of the state through peril and sacrifice of their property and life' (§324A). With such 'sacrifice' for the state elevated into a 'universal duty' (§325), property and life, Hegel explains, must be 'posited as contingent' (§324A). It seems to be the same 'determination' (§324) that plays out in the destiny of hereditary landowners or, for that matter, the monarch in peacetime already. With reference to the relation between politics and morality,¹⁴³ Hegel claims that 'the welfare of a state has a completely different justification than the welfare of individuals' (§337A). In the remark on §126, Hegel explicitly rejects the opposition of private rights to the universal purpose of the state, which does not mean that he does not recognise and cherish such rights. For present purposes, it may be sufficient to register Hegel's understanding that 'family property . . . has a political meaning'.¹⁴⁴

¹⁴⁰ *VPRI7*, 92. Cf. *PR* §180A: 'doch nicht als eine Willkühr, sondern als aus der Idee des Staates nothwendig'.

¹⁴¹ *VPRI9*, 566. ¹⁴² *VPRI9*, 566.

¹⁴³ For more detail on the debate on this subject started by Garve 1783 and entered into by Kant 1795, see Wolff 2008.

¹⁴⁴ *VPRI9*, 448.

As in the case of hereditary royal succession (§§280, 281 and 286), Hegel advocates the majorat as part of an institutional structure meant to reduce the degree of contingency involved in state affairs. Karl Marx, for one, accused Hegel of ‘crassest *materialism*’ and the perpetuation of ‘the *religion of private property*’ for accepting the majorat as a means to an end.¹⁴⁵ At the time, however, Hegel was not alone in his advocacy of the majorat as a ‘political necessity’.¹⁴⁶ The influential publicist Friedrich Buchholz, for instance, equally wrote ‘On the political importance of majorats’ and reaches the conclusion that they are ‘inevitably necessary for the protection of this form of government’, meaning constitutional monarchy with a representative system.¹⁴⁷

An avid translator of political literature, Buchholz was clearly influenced by currents of discussion on the subject in French and English.¹⁴⁸ He explicitly refers to the debate in France and dismisses the criticism of Jean-Denis Lanjuinais (which he compares to Thomas Paine’s) as well as Jean-Pierre Maransin’s defence of majorats for equally failing to comprehend their greater constitutional significance.¹⁴⁹ Yet Buchholz considers his contribution a novelty in the German discourse, maintaining that in a period concerned with constitutions, the importance of majorats cannot be stressed enough. He puts the history of entailment, especially as discussed by Blackstone and Bonald, to one side and proceeds to vindicate its political purpose ‘in our times’. Originally founded by kings and emperors as ‘pillars of the throne’, majorats have now become recognised as ‘an institution to avert despotism’. Indeed, Buchholz extols them as ‘an *institution for the advancement of universal freedom through the most suitable laws*’. He chides those who attack the institution of majorats, like Paine, for failing to grasp their link to the entirety of the constitution. With reference to the British model, Buchholz refers to a chamber of peers founded on majorats as the ‘basis’ as well as ‘the noblest part’ of the constitution, fostering stability and freedom. The institution of majorats, he concludes, is ‘indispensable’ to a representative form of government.¹⁵⁰

¹⁴⁵ Marx [1843] 1982, 114, 112.

¹⁴⁶ Pace Bayer 1999, 294 who claims that Hegel was the first to formulate a constitutional interpretation of entails.

¹⁴⁷ [Buchholz] 1819a, 532.

¹⁴⁸ See D’Aprile 2013, 399f. for a list of titles translated by Buchholz.

¹⁴⁹ See Lanjuinais 1819 and Maransin 1819.

¹⁵⁰ [Buchholz] 1819a, 532, 538, 538, 533, 534, 535, 538.

There are remarkable parallels between Buchholz's and Hegel's argumentation. A harsh critic of feudal nobility like Hegel,¹⁵¹ Buchholz equally tries to emphasise the purely political character of arranging inheritance through majorats. He too espouses the assessment of the majorat as 'a family-injustice' that is advantageous to society. The reasoning underlying Buchholz's advocacy of this institution is the same as Hegel's, namely that it provides a class of men whose exclusive vocation is to engage disinterestedly in public affairs. It is not heredity or nobility as such that matters but the 'firm foundation' the majorat provides to the members of the first chamber. Their 'unshakeable state of assets' affords independence and enables dedication to the public good with 'impartiality'. The majorat thus provides the basis for a chamber of peers as 'an assembly of men, who, in their independence from the state coffers provide the guarantee for *high-mindedness*'.¹⁵²

Not everybody connected the majorat as firmly to bicameralism as did Hegel and Buchholz, and advocacy of one did not guarantee support for the other. The Rhenish publicist Benzenberg, for instance, advocated the two-chamber system but not the institution of majorats, stressing the King's right to appoint peers for life. He was attacked for his 'indefensible' 'anti-majorat-system' by Carl Wilhelm Koppe, a councillor to the Prussian government, who rejected bicameralism as 'French and English superstition'. Koppe himself in fact favours the institution of the minorat, that is heredity of the youngest relative, which he considers to be the 'stronger' form of succession.¹⁵³ Another author drew a similar conclusion precisely from the British example, insisting that all large kingdoms should have 'a hereditary patriciate' based on primogeniture but not a two-chamber system.¹⁵⁴ As with the question of bicameralism in general, the attempt at a clear attribution of political standpoint purely on the basis of an author's stance on the issue of majorats is futile. As an originally noble institution, the majorat was, for instance, equally defended by the 'political Romantic' Adam Müller, one of Buchholz's great antagonists.¹⁵⁵ This contrast to the position of another Romantic, Arnim, as outlined

¹⁵¹ In evidence, for instance, in [F. Buchholz], *Untersuchungen über den Geburtsadel und die Möglichkeit seiner Fortdauer im neunzehnten Jahrhundert* (Berlin; Leipzig, 1807). The characterisation of Buchholz as 'literary spokesperson of the feudalists', which Lee 2008, 619 copies from Treitschke [1882] 1916, 572 is far off the mark; contrast D'Aprile 2013a, chapter 6 and D'Aprile 2013b. Hegel's opposition to noble privilege is discussed below.

¹⁵² [Buchholz] 1819a, 539, 539, 544, 547, 548. ¹⁵³ Koppe 1816, 1735, 1771, 1773, 1746.

¹⁵⁴ *Von den Ideen* 1815, 138.

¹⁵⁵ On *Political Romanticism*, see Schmitt [1919] 1986; on Buchholz's opponents, D'Aprile 2013a, 10.

above, shows once again that many differences existed within supposedly homogenous groups.

Nobility and Independence

In the minds of many contemporaries, the notion of a second chamber was firmly connected to the nobility, as exemplified by the British House of Lords. The theory of the balanced constitution, especially as developed by Montesquieu, had entrenched the belief that a second chamber populated by the nobility was naturally best suited to serve as *pouvoir intermédiaire* and guarantor of liberty.¹⁵⁶ In the German lands post-Revolution and post-Napoleon, however, such 'aristocratic liberalism' was far from self-evident as the role of the nobility was subject to fierce controversy.¹⁵⁷ A difficult question about the legitimate order of society was thus crucially implicated in the bicameral question. While opposition to the two-chamber system sometimes came from nobles themselves, as in Württemberg, much of the resistance to bicameralism was indebted to concern about noble power. According to some sources, the need to restrict noble privileges was generally acknowledged, yet there was disagreement about just how far they should be curbed.¹⁵⁸ Acting as a spokesperson of the Brandenburg nobility, Adam Müller, who would be ennobled on Metternich's recommendation in 1826, polemically spoke of the persecution of the noble estate.¹⁵⁹

The situation varied considerably between different states. Some, like Prussia, looked back at old-established traditions of nobility. For others, like Württemberg, the nobility presented 'an entirely new element for the state' after 1806, due to the institution of immediate knighthood in the Old Empire.¹⁶⁰ The question of how to integrate the nobility effectively within the state's political structure loomed large in those states where bicameralism was first institutionalised. In the search for an arrangement 'which makes it impossible for the nobility to enlarge their rights and prevents the non-nobles from reducing those constitutional rights of the nobles', the two-chamber system presented a viable candidate.¹⁶¹ Some saw the institution of separate chambers primarily as an outlet for noble

¹⁵⁶ Montesquieu 1748, Book II, Chapter 4.

¹⁵⁷ On the career of this 'political language' in France, see De Dijn 2005a, 2008. In the German context, Fehrenbach 1997, 265 refers to it as 'a minority phenomenon'. For a *Begriffsgeschichte* of nobility and aristocracy, see Conze 1972.

¹⁵⁸ E.g., *Nachtheile* 1819, 1673. ¹⁵⁹ Müller 1816, 11. ¹⁶⁰ [Wangenheim] 1816, 47.

¹⁶¹ Cotta 1815, 149.

ambitions, thus offering the possibility to contain them within certain limits and prevent the nobility from dominating a unicameral Assembly.¹⁶² Others feared that outright revolution would follow the juxtaposition of nobles and commoners in two separate chambers.¹⁶³

To a considerable number of commentators, 'the project of two chambers' seemed designed specifically to secure the position of the nobility, for better or worse.¹⁶⁴ Indeed, bicameralism was most vehemently rejected by those who feared the resuscitation of feudalism at the cost of recent revolutionary achievements. Interpreting the argument for mediation and the introduction of an upper house as no more than a device to preserve outdated social structures and uphold unjust privileges, critics essentially equated bicameralism with the defence of noble prerogatives and the institutionalisation of quasi-feudal relations. In this vein, the poet-politician Ludwig Uhland passionately rejected the institution of an 'aristocratic chamber', which he considered a mere perpetuation of 'noble prejudice' and at odds with the principle of equality and the rights of man. The revolutionary fight against 'aristocracy' would have been in vain if it was reinstalled now, and to institute a noble chamber would mean nothing less than 'to insert the seed of death into the constitution, [to] prepare new upheavals'.¹⁶⁵

The refusal of a second chamber by the diplomat and publicist Karl August Varnhagen, who would later become Hegel's friend, was equally grounded in aversion to noble privilege.¹⁶⁶ Notwithstanding his own family background as betrayed by his full name, Varnhagen von Ense passionately wrote against aristocracy, whose time he declared to be over. In his review of Wangenheim's *On the Separation*, which appeared in a Bavarian daily and the *European Annals*, he rejects the notion that history had vindicated the necessity of a nobility and 'the beguiling flattering picture of a chamber of peers, an upper house, inalienable landed property, hereditary family dignity etc. etc'.¹⁶⁷ The title Varnhagen chose for the

¹⁶² For instance, Hegewisch 1818. ¹⁶³ E.g., Benzenberg 1816; Koppe 1816, 1770, 1772.

¹⁶⁴ Pfaff 1817, 165–66. Not averse to this purpose, the author argues it may just as well be achieved with one chamber. C[arl]stens 1820, 462 identifies the objection to hereditary privilege as the main reason marshalled against the separation of 'parliament'. *Von den Ideen* 1815, 127–28 rejects the institution of an upper house because its aim supposedly consists in the representation of nobility.

¹⁶⁵ Uhland 1817, unpaginated.

¹⁶⁶ Varnhagen was co-founder and collaborator on the *Yearbooks for Scientific Critique* and husband to Rahel Varnhagen, whose salon Hegel frequented in Berlin. Describing his relationship to Hegel in a letter to Hegel's first biographer Karl Rosenkranz from 24 April 1840, Varnhagen mentions their 'divergent political judgments' (ed. Warda 1926, 89). The bicameral question surely was one such instance.

¹⁶⁷ [Varnhagen] [1816b] 1984, 39.

anonymously published 'Vote of a free German man against the establishment of an upper house' is as programmatic as its epitaph: 'What kind of government do you favour? A king and no nobles.'¹⁶⁸ The latter directly contradicts Montesquieu, who had proclaimed the 'fundamental maxim' of monarchy to be: 'No monarch, no nobility; no nobility, no monarch.'¹⁶⁹ Varnhagen considers the Southern states to have started Germany on a 'dangerous wrong track' with the institution of the two-chamber system, because it means to breathe new life into the last vestiges of feudalism. He judiciously equates nobility with a second chamber, presenting the terms 'noble house – upper house, chamber of peers, senate' all as synonyms.¹⁷⁰

Yet there is good reason to question the argumentative move that suggests that advocacy of the two-chamber system, buttressed with the argument for mediation, necessarily signals support for noble prerogative. Hegel for one embraces the two-chamber system while he clearly shares the commitment to the values of the French Revolution, even though he condemned its course, as did most. The criticism of privilege is a continual strand in Hegel's thinking, evident in virtually all of his so-called political writings, from the 1798 fragments on Württemberg and *The German Constitution* to the *Assessment*, the *Philosophy of Right* and numerous lectures. There can be no doubt about Hegel's aversion to aristocracy, which was not least informed by his first-hand experience of a corrupt political system as a young man. Following graduation, Hegel had worked as a house tutor in Bern from 1793 to 1796. In a letter to his former roommate and long-time friend Schelling, Hegel shows himself appalled by the nepotism involved in the elections to Bern's Grand Council.¹⁷¹ His very first publication, a translation of Jean-Jacques Cart's *Lettres* on the Vaud, which has remained rather underappreciated in the literature, is in fact directly related to this exasperation with Bernese government. The original work had caused some stir, with Cart's flight to America following its banning in Switzerland, and even sparked the interest of the founding fathers. John Adams forwarded a dedicated copy to Thomas Jefferson in the spring of 1794, adding that he deemed the book 'well worth reading'. 'The Case of the Pays de Vaud is curious enough', Adams judged and was

¹⁶⁸ [Varnhagen] 1816a, 552.

¹⁶⁹ Montesquieu 1748, II,4. Cited according to the 1777 translation of *The Complete Works of M. de Montesquieu*.

¹⁷⁰ [Varnhagen] 1816a, 556; [Varnhagen] 1816c, 186. ¹⁷¹ *BI*, 23, dated 16 April 1795.

soon convinced by the testimonies of Cart and other exiles in New York that the Canton of Bern was truly 'tyrannical'.¹⁷²

Given Cart's fate, Hegel took the precaution of publishing his translation anonymously and declaring the original author dead, when in fact he lived until 1813. He also took considerable liberty in editing Cart's work, not only translating and annotating the letters but even omitting some of them. The result was revealingly subtitled *Eine völlige Aufdeckung der ehemaligen Oligarchie des Standes Bern* (*A Complete Disclosure of the Former Oligarchy of the Estate Bern*) and manifests twenty-eight-year-old Hegel's allegiance to the revolution.¹⁷³ Two decades later, he still attacked 'the Bernese's view' of government in the form of Carl Ludwig von Haller's *Restoration of the Science of State*, as related in Chapter 2.¹⁷⁴ The student movement, which, besides much else, rallied behind the cause of constitutionalisation, also clearly identified Haller as an enemy, symbolically burning his work at the Wartburg Festival. One of Hegel's students, Gustav Asverus, even stood accused of sending 'a threatening letter to Herrn von Haller'.¹⁷⁵ Hegel's opposition to the patriarchal theory championed by Haller, whom he credits with 'zeal for the most terrible aristocracy',¹⁷⁶ is indicative of his rejection of social relations under feudalism (§286A), a system based on 'privileged personality' and 'arbitrariness' (§273A). In the *Philosophy of Right*, Hegel judges aristocracy to be particularly prone to corruption and degeneration into 'tyranny or anarchy' (§273); and in one of the lecture transcripts, it is literally registered as the 'worst of constitutions'.¹⁷⁷

Given Hegel's aversion to feudalism, noble privilege and aristocracy, his advocacy of bicameralism calls into question its suggested link with their perpetuation. Hegel was not alone in insisting on mediation by a first chamber without defending noble prerogative either. Essentially, he takes part in a theoretical move that modifies the idea of mediation for a post-aristocratic world, shifting the emphasis from nobility to land ownership. This functional variant is concerned with retaining the quality of independence without privilege. That such a change in thinking took place was registered, for instance, by the historian Barthold Georg Niebuhr, who complained that 'in more than one country of Germany, one has started to

¹⁷² Catanzariti 2000, 50, 71, 71: Adams to Jefferson on 4 April and 11 May 1794, respectively.

¹⁷³ [Hegel] 1798, also in *GW*2, 395–581. Hegel's library contained three copies of his translation (*K* 1219–21) and one original (*K* 1143).

¹⁷⁴ *GW*22, 38 (marginal comment accompanying Hegel's excerpts from the *Restoration*).

¹⁷⁵ *BIVb*, 57. ¹⁷⁶ *VPR*24, 1357.

¹⁷⁷ *VPR*18, 314. In *VPR*19, 536 Hegel credits Montesquieu with making this observation first.

substitute [*unterzuschieben*] the concept of nobility with that of the owners of landed estates'.¹⁷⁸ In reply to Hegewisch's article 'On the importance of political forms', E. F. Carstens criticises this development too. While he declares noble privilege to be 'null and void', he insists on 'historical claims to peerage'.¹⁷⁹ Instead, Hegewisch wants to render inherited land ownership the sole qualification for a seat in the first chamber, rather than forefathers, rank and title. One should also note that Hegewisch did not advocate the institution of the majorat. In light of ongoing socio-economic changes in the early nineteenth century, other authors too observed that land ownership did not nearly correspond with noble titles anymore and that the former was what mattered for membership in an upper house.¹⁸⁰

In view of the demands posed by public opinion – informed by the ideal of equality – the need to render the formerly feudal nobility constitutional, as had happened with the peers in Britain, was clearly recognised. Instead of depriving them of their allegedly rightful possessions, the existing nobility should be integrated and accorded 'a new constitution in keeping with the times'. In short, contemporaries agreed that 'feudal nobility has to be transformed into a constitutional [nobility]'.¹⁸¹ Arguably, the fourteenth article of the 1815 Federal Act provided the template for such modification in constitutional practice. Designed to accommodate the nobility, it promised wealthy owners of landed property a share in political representation without explicitly qualifying them as noble.¹⁸² On the whole, it has been found, the nobility lost influence despite this provision.¹⁸³ In practice, landed property was of course concentrated predominantly in the hands of noble families, yet not immutably so. The great proponent of bicameralism Wangenheim showed himself conflicted on the matter and his writings, intentionally or not, draw attention to the possibility of detaching mediation and bicameralism from nobility.

On the one hand, Wangenheim leaves no doubt about his allegiances. Of noble origin himself, he is clearly sympathetic to the nobility and was denounced as 'coryphaeus of the crypto-aristocrats' by an anonymous adversary.¹⁸⁴ Wangenheim contends that history, and thereby nature,

¹⁷⁸ Cited in Kraus 1996, 303, n. 87.

¹⁷⁹ C[ar]stens 1820, 471, 472.

¹⁸⁰ E.g., Krug 1816, 51.

¹⁸¹ *Rheinische Blätter* 1817, 388. Massenbach converges with the author of this very uncharitable review of Part I of his work on this very point, copying these exact words in Massenbach 1817b, Part II, 43.

¹⁸² *Bundesakte* 1815, Art. XIV promised 'Antheil der Begüterten an Landstandschaft'.

¹⁸³ Fehrenbach 1997.

¹⁸⁴ *Noch etwas* 1816, 6. This article was introduced as "anti-aristocratic" remarks' by the journal editor and its author accused of 'hatred of the nobility' in an attached reply (*ibid.*, 1, 10).

has vindicated nobility as ‘an essential element of the constitution’ and, not failing to invoke Montesquieu, calls it ‘necessary to the state’.¹⁸⁵ From the explanation given for the nobility’s aptness to mediate, however, it emerges that it depends on a factor contingent rather than inherent to nobility. What makes nobles particularly apt for the task of mediation is that they possess ‘a *secondary autonomy* and *power*’, being simultaneously independent of the democratic and autocratic elements in the state.¹⁸⁶ This ‘relative independence’ – being curtailed insofar as they depend on public opinion and sovereign command – is due to wealth in the form of landed property, the continued existence of which is secured by the institutions of entail and primogeniture.¹⁸⁷ It is thus *landed* nobility (*Guts-Adel*) that is particularly suited to the task of mediation.

The nexus between independence and wealth in the form of landed property, rather than noble title, is most clearly pronounced when Wangenheim admits the following: ‘When the nobility became poor, it was also . . . politically destroyed.’ It is the endurance of landed property that maintains a class of independent men with public spirit and thus functions as ‘fulcrum for the whole state’.¹⁸⁸ In comparison to this material basis, the nobility’s other qualities, due to its facilitated access to education, societal respect for noble birth and the ensuing self-assurance, appear as merely accessory. The crucial importance of land ownership is confirmed by Wangenheim’s basic distinction between those who own land and those who do not, to whom he refers as different ‘classes of people’.¹⁸⁹ Yet he is unclear, and potentially indecisive, about whether the upper house should be composed of mainly nobles or any large landowners. On one side, it seems that he settles for the ownership of landed property as decisive, rather than nobility.¹⁹⁰ At the same time, he treats the upper house as essentially synonymous with nobility. In the end, Wangenheim thus remains ambivalent on the relation between land ownership and nobility and was justly criticised for conflating nobles and landowners.¹⁹¹

What is merely indicated in Wangenheim’s works, namely that what really matters is land ownership rather than titles and privileges, is

¹⁸⁵ [Wangenheim] 1816, 221, 16. Montesquieu is mentioned on page 18.

¹⁸⁶ [Wangenheim] 1815, 138. Cf. [Wangenheim] 1816, 6 ¹⁸⁷ [Wangenheim] 1815, 139.

¹⁸⁸ [Wangenheim] 1816, 18; [Wangenheim] 1816, 8 [*das Grund-Eigenthum der Stützpunkt für den ganzen Staat*].

¹⁸⁹ [Wangenheim] 1816, 31 [*Volksklassen*]. ¹⁹⁰ [Wangenheim] 1816, 19–20, 26–27, 43–45, 66.

¹⁹¹ See [Varnhagen] 1816c, 185.

reflected more consistently in Hegel's theory of institutions. It conveys appreciation for the view, allegedly prevalent in England and France, of large landowners as the 'true nerve of the state'.¹⁹² One thinks, for instance, of Edmund Burke's description of landowners as 'the great oaks' of the constitution.¹⁹³ In his lectures, Hegel suggests that the landowners constituting the first chamber 'may be called a *hereditary nobility*' but is quick to add that they enjoy no 'privileges and feudal rights'.¹⁹⁴ Instead, they share the common people's rights and needs. They even lack certain basic rights the rest of the citizenry enjoys, such as freedom of property and choice of occupation. In this sense, they make a personal sacrifice for a greater purpose, with their freedom limited as they forgo the basic civil right to do whatever does not do harm to others. Indeed, their lot may be perceived as a burden and a hardship as they make 'sacrifices for the *political purpose*' (§307). They do not receive preferential treatment in the appointment to state offices, and their special status is characterised by duty rather than privilege.¹⁹⁵ Buchholz, who formerly served as instructor at the Ritterakademie in Brandenburg, an aristocratic educational institution, also stresses that peers hardly enjoy privileges but make 'sacrifices', their calling being 'more a *duty* than a *right*'. In fact, he thinks that everybody benefits from 'the limitation of nobility to the right of primogeniture', which leaves all but one of a family's offspring entirely without privileges and thus increases the general 'equality of rights and duties'. They may enter military or civil service, trade or industry and thus pursue 'useful labour' while connecting the noble families with civil society.¹⁹⁶

What matters to Hegel are the qualities of representatives, not their social standing, and the defining characteristic of the members of his first chamber is complete independence due to the hereditary ownership of '*inalienable*' land (§306). The idea of mediation is thus detached from its social basis in the nobility and essentially stripped of its aristocratic dimension. While Niebuhr worried about losing 'the stability and permanence, which are the true virtues of the nobility',¹⁹⁷ Hegel wants to preserve exactly these qualities without noble privileges in tow. Granted, he accepts inequality as a basic factor of life (§200A). Concerned only with guaranteeing the political function of the first estate, however, he

¹⁹² *VPR*17, 119. ¹⁹³ Cited in Mitchell 2009, xviii. ¹⁹⁴ *VPR*17, 198.

¹⁹⁵ In *VPR*17, 119, Hegel gives the negative example of Prussian nobility, which used to have the exclusive right to be commissioned officers.

¹⁹⁶ [Buchholz] 1819a, 547, 533, 542, 544, 540–41, 539, 540.

¹⁹⁷ Cited in Kraus 1996, 303, n. 87.

explicitly states that the aspect of nobility in the sense of birth and title is 'completely irrelevant'.¹⁹⁸ As with the institution of the majorat, Hegel insists on its purely political character as a guarantee for continued independence.

The fact that the members of Hegel's first chamber participate in legislation by heredity, being both 'called and *entitled* to it by *birth* without the contingency of election' (§307), means that the monarch cannot control membership and thereby render it subject to his arbitrary will. It is in this sense that the recourse to determination by nature reduces, against surface impressions, the contingency involved in the matter of 'who is called to such an important function as is participation in legislation'.¹⁹⁹ In §306 of the *Philosophy of Right*, Hegel explains that members of the first chamber are qualified for their 'political position and significance' by the independence derived from their '*inalienable hereditary property* burdened with the majorat'. The underlying idea has already been encountered above, namely that inalienable landed property enables the independence needed to ensure that decisions are taken with nothing but the best interest of the state at heart. The members of Hegel's first chamber are independent of any and all external circumstances and of the prince as well as the people. This is guaranteed by their inherited assets, which Hegel alternatively describes with the terms 'Grundbesitz' (§305), 'Grundvermögen' or 'festes Vermögen',²⁰⁰ which, next to the literal meaning of landed property, seems to carry the connotation of a basic capital on which one may always fall back. This enables independence in several respects.

On the one hand, members of the first chamber are 'independent of state assets' (§306). Elevating guaranteed financial independence into the crucial determinant for membership in the first chamber, Hegel precludes the possibility of their being salaried, for that would render them dependent on the government, subject to arbitrariness and liable to manipulation. The question of salary was contentious among the advocates of two chambers, with some, like Wangenheim and Wieland, arguing that only generous remuneration, which freed representatives from financial worries, would guarantee their independence and prevent susceptibility to bribes.²⁰¹ In contrast, Buchholz maintains that 'a *salaried* chamber of peers' cannot be trusted and is thus 'useless'.²⁰² He presents remuneration as the main difference between the British and the French system, with

¹⁹⁸ VPR24, 1457. ¹⁹⁹ VPR19, 566. ²⁰⁰ VPR17, 198, 199.

²⁰¹ [Wangenheim] 1816 and Wieland 1816, 440. ²⁰² [Buchholz] 1819a, 547, 533.

peers in the latter being salaried like civil servants. Hegel too points to France as a negative example, where members of the *Sénat conservateur* were afforded 'lifelong use of a great estate' with the result of being rendered a mere 'tool' of Napoleon.²⁰³ He concludes that a salary renders representatives contingent on the goodwill of the ruling power and thus leads to self-censorship, if not direct influence, essentially working like a bribe. For this reason, members of the first chamber need to be financially independent. In a postscript to his 1819 article 'On the political importance of majorats', Buchholz applauds the French King's latest appointment of sixty new peers with majorats and interprets this act as a confirmation of his view. In contrast, Hegel could not have approved of Louis XVIII's action, which signalled exactly the kind of arbitrary royal intervention he wanted to forestall.

Beyond salary, inalienable hereditary lands render their owners independent of 'the uncertainty of trade' and 'the quest for profit' (§306). In order to preclude selfish interests from entering the consideration on matters of state, members of the first chamber are explicitly barred from the exercise of any profession in Hegel's vision of the representative system. Bound to 'participation in the universal', or public affairs, they should exactly not have the mindset of a merchant, who 'is always after profit'.²⁰⁴ Finally, to except their assets from 'the variability of property altogether' (§306), members of the first chamber are even rendered independent with respect to their own will, insofar as they 'lack the right', specified in §65 of the *Philosophy of Right*, to freely dispose of their property and to determine inheritance (§307). This restriction both contributes to the representatives' incorruptibility and ensures the continuation of their estate in unaltered conditions.

These provisions, which Hegel later described as 'negative' in the sense of merely enabling, or removing 'obstacles', fulfil a crucial political function. Not being subject to loss or any change whatsoever, hereditary land ownership provides 'inconsiderateness' in the positive sense that its holders do not need to care about anything but matters of state.²⁰⁵ Freed from mundane considerations, they will be able to focus exclusively and unbiassedly on politics. Unimpeded by all the distractions of regular civil life, these members of the first estate may dedicate their lives to 'higher political

²⁰³ *VPR*19, 566; *VPR*18, 318.

²⁰⁴ *VPR*17, 199. The merchant's speculative mindset had recently been dissected, for instance, by Meisner 1811.

²⁰⁵ *VPR*24, 1457, 1457; *VPR*19, 567.

education [*Bildung*]' and serve the 'universal purpose', or the common good.²⁰⁶ Sharing election by nature with the monarch and the common people's rights and needs, Hegel claims, the first chamber constitutes 'the pillar of throne and society simultaneously' (§307). Their only interest will be 'that the state and all particular interests and estates are being maintained'. As Hegel explains shrewdly, their external independence provides 'the absolute possibility of internal independence'.²⁰⁷ The political and legislative considerations of the first chamber will thus be freed from ulterior motives, and its members will reflect an attitude of non-dependence. To enable this as far as possible is the rationale behind Hegel's system.

In the addition to §273 of the *Philosophy of Right*, Hegel makes clear that he considers lawful organisation and virtue complementary, rejecting the notion that trust in the right attitudes of political leaders is enough. While this comment is situated within a discussion of Montesquieu, it may well also have been aimed at Hegel's rival Friedrich Schleiermacher, the prominent theologian and head of the Berlin Academy (to which Hegel was never admitted).²⁰⁸ The upshot is the need for institutional arrangements that guarantee the rule of law. In this vein, Hegel is concerned to create conditions in which members of the first chamber have absolutely no incentive to engage in bribery and related shady activities and to render them free from domination. He insists that the constitution is meant to provide objective guarantees for freedom and the rule of law in the form of institutions, not subjective ones like character or oath taking (§286A).

Here we come full circle to the fundamental point about Hegel's constitutional design. Instead of leaving the course of politics to something as fickle as sentiment and chance, the state should be organised as rationally as possible. Hegel's ambition in this respect is expressed in his contention that 'the concept and philosophy make the viewpoint of mere contingency disappear' (§324A). This, after all, was his self-proclaimed aim in the *Philosophy of Right*: 'to comprehend and portray the state as something rational in itself'.²⁰⁹ Being featured in it, a chamber of

²⁰⁶ VPR17, 199. ²⁰⁷ VPR17, 195; VPR19, 566.

²⁰⁸ On Schleiermacher's politics and his emphasis on *Gesinnung* (the very word Hegel uses in PR §273A), see Arndt 2019, 196–226. Two short accounts of 'Schleiermacher and the state' in English are provided by Vial 2005 and Adair-Totteff 2020. As a starter on the fraught relation between Hegel and Schleiermacher, see Pinkard 2000, 445–47.

²⁰⁹ PR, preface, 15.

independent landowners accordingly forms part of the rational constitution for Hegel, and this chapter has scrutinised why. In parallel, Chapter 5 will explore the composition and functioning of the other chamber in Hegel's bicameral system, as well as the conditions he and his contemporaries considered necessary for successful representation.

The Representation of Interests

The main thing is not that the individual gets to speak as an abstract individual but that his interest is voiced.

Lectures on the philosophy of right (1824)

As Chapter 4 has shown, the members of the two chambers in Hegel's bicameral system differ with respect to the estate they respectively belong to and in their concomitant qualities. The second chamber is thus held by persons of a radically different background and circumstances from the large landowners occupying the first. As Hegel explains, the word estate, or *Stand*, has two meanings, one civil and one political. He contradicts 'so-called theories'¹ that draw a distinction between the two and argues that they must correspond, precisely because he wants to connect 'civil and political life'; this is the express purpose of the Estates (§303A; cf. §301A). In fact, the transition from civil society to the state is 'very simple' according to Hegel, as the estates are the same in each.² In this sense, Marx's mocking description of Hegel's Estates Assembly as the 'miniature edition' of civil society is perhaps not altogether inappropriate.³

In the section of the *Philosophy of Right* dedicated to civil society, Hegel recognises three professional estates: 'the *substantial* or immediate', that is, the agrarian estate; 'the reflecting or *formal*' estate, which includes all those involved in trade, industry and commerce; and 'the *universal* estate', namely the civil service (§202). Yet only the former two map onto the Estates in the political arena, because the members of the 'universal' estate are already closely involved in the exercise of government by the nature of their occupation (§303). They are thus disqualified from acting as popular representatives in the Estates Assembly. This is made explicit in the lectures of 1822/23⁴ and in §314 of the *Philosophy of Right*, where Hegel refers to the Estates as concerned with 'the parts of civil society not

¹ In *VPR*22, 1029, Hegel also refers to them as 'modern theories'.

² *VPR*24, 1404.

³ Marx [1843] 1982, 94.

⁴ *VPR*22, 1029.

participating in government'. This invalidates the charge of obscurity concerning the political representation of the universal estate.⁵ Already Karl Marx had remarked that 'the universal state is therefore represented in the legislative power by the governmental power'.⁶

As a university professor, Hegel belonged in this category himself, and he seems to have changed his mind on the role of salaried state employees in representation. In contrast to the *Philosophy of Right* of 1820, Hegel had explicitly demanded the inclusion of civil servants in the body of representatives in his *Assessment* of Württemberg's constitutional conflict three years earlier. There, he argued at length that by denying eligibility for the office of representative to all members of the universal estate, one would exclude a country's brightest minds and those with the greatest disposition for state matters from contributing to the legislative process.⁷ This was a contentious issue at the time,⁸ and in fact a considerable number of professors became prominent members of the Assemblies in various German states in subsequent years.

A possible explanation for Hegel's change of position on this 'matter which is of great importance' between 1817 and 1820 has to do with the size of states. In the *Assessment*, Hegel explicitly contrasts Württemberg with 'large states like France, for example, and England even more so', where the conditions for individuals' involvement with 'more universal interests' are very different. In smaller states like Württemberg, as Hegel knew from personal experience, most of the educated classes found their employment in state services. Accordingly, he was afraid that there would be 'disproportionately fewer [individuals] to be found, who bring substantial insight and experience in universal affairs into an Estates Assembly'. Hegel was especially wary of one group of possible representatives; with reference to 'an all too famous statesman', possibly meaning Edmund Burke, he declared 'lawyers to be the most inept to advise and act in public affairs'.⁹ Merchants and tradesmen could not, in a small state, make up for what would be missing if civil servants were excluded from becoming deputies. This seems to imply that, in the *Philosophy of Right*, Hegel

⁵ Made by Boldt 2000, 191.

⁶ Marx [1843] 1982, 77. Yeomans 2017, 470 and 479 also puts the matter very clearly, yet he overlooks Hegel's earlier position, which I treat in the following paragraphs.

⁷ *LW*, 37–40.

⁸ As demonstrated, e.g., by Paulus's 1814a, 614 objections to Arndt 1814b for wanting to exclude scholars from acting as representatives.

⁹ *LW*, 38. The editors of *GW15* suggest that Hegel alludes to Burke 1790, 61–63. Knox, who translated extracts of the *Assessment* for Hegel 1964 (246–94), thought of Napoleon instead; cf. Hegel 2009b, 41.

self-consciously concerned himself especially with the constitution of larger states.

Excepting the universal estate from membership in the Estates Assembly, although not from its attendance, the *Philosophy of Right* leaves us with two estates entitled to political representation in the Assembly, each represented in a chamber of their own, namely the agrarian and the industrial estate. As discussed in Chapter 4, they are principally distinguished on the basis of land ownership. In distinction to the first estate, which Hegel also labels 'the substantial estate' (§203 and §307), the second is alternatively described as arising from 'the *moveable* part of *civil society*' (§308). Rather than involved in the ownership and cultivation of land, its members are concerned with trade, industry and commerce. While they enjoy free choice of occupation, every member of the second estate must be member of a corporation (§§251–53). These corporations play a crucial role beyond the sphere of civil society, for they mediate participation in the political state.

Election

In contrast to the hereditary members of Hegel's first chamber, who are entitled to appear in Assembly in person, those belonging to the second are elected. At the time, most proposals for Estates Assemblies entailed some form of such a combination of 'representation by birth' and 'representation by election'.¹⁰ The modalities of election, however, were subject to controversy, interpreted by a contemporary admirer of Hegel as a conflict between the '*organic*' or '*dynamic*' and the '*atomistic*' view.¹¹ Hegel's position in the divide follows directly from his broader organicist commitments; while he does not deny the advocates of common suffrage good intent, he considers this form of individualist election, where 'citizens appear as isolated atoms and electoral assemblies as unorganised, inorganic aggregates', unfit to achieve its purposes.¹²

As the previous chapters have shown, one of Hegel's chief concerns was that the people should not appear as a mere inorganic multitude, 'a mass of fragmented atoms',¹³ or 'a *crowd* and an *aggregate*' with 'inorganic opinions and volition' that may turn into 'a merely mass-like power in opposition to

¹⁰ Pölitz 1823, 397; cf. [Pölitz?] 1819, 92.

¹¹ Berger 1819, 53. The author himself is disinclined to election via corporations.

¹² *LW*, 44.

¹³ *VPR*24, 1444.

the organic state' (§302).¹⁴ For a government intent on arbitrary rule, says Hegel, 'nothing is more advantageous than such fragmentation into atoms' and the lack of an organically structured body of the people.¹⁵ At the same time, nothing is more threatening to the stability of the state. Rather than to 'jump from the state to the individual citizen', there needs to be an 'intermediary member', which Hegel finds in the corporation.¹⁶ Against the 'atomistic, abstract view', he sees the individual as part of a greater whole, a 'member of something universal' (§303A).¹⁷ This destiny is firstly realised through membership in 'associations, communities and corporations' (§308). In Hegel's view, it is irrational to think that the people organised in these 'circles' of civil society should again break into an inorganic 'mass of individuals' (§303A) in order to perform the 'single and temporary act' of direct election (§308). Instead, he suggests, the 'people's representatives'¹⁸ should be elected via the 'already constituted' organisations of civil society (§308). In this way, deputies will be 'rooted in something already existent'¹⁹ rather than hanging 'in the air' (§303A). Political participation is thus mediated by membership in a corporation, which is required of every member of civil society working in trade or industry (§§250–51).²⁰

While Hegel is well known for advancing a model of corporate election, it has more often been contrasted with present-day representative and electoral arrangements than analysed as an answer to contemporary concerns. Yet his aversion to quasi-universal suffrage was hardly unusual in the context of his time. It was also long-standing, for already in the 1798 fragments on Württemberg, Hegel demands that 'the magistrates must be elected by the citizens'. He questions whether, in a country governed by hereditary monarchy for centuries, it was well advised to suddenly let an

¹⁴ Knox and Nisbet have translated 'bloß massenhaften Gewalt gegen den organischen Staat' as 'a powerful bloc in opposition to the organized state' and 'a massive power in opposition to the organic state', respectively. 'Gewalt' may also be read as 'violence', as corroborated by the mention of a 'destructive mass' in *VPR*22, 1028 –*PR* §302Z; one thinks of the French Revolution. In my view, Hegel's turn of phrase does not qualify the people in such condition as powerful but describes its nature as 'merely mass-like' in the sense given for 'massenhaft' in the brother Grimms' dictionary: 'appearing as mass or as multitude' (Grimm and Grimm 1885, 1711). It is explicitly opposed to the organic state as 'a blind power' or a mass 'which has no rational power' (*VPR*24, 1444; cf. *PR* §303A).

¹⁵ *VPR*24, 1444. In the 1830 *Encyclopedia*, §544A, Hegel opposes organic 'populus' to inorganic 'vulgus' (*GW*20, 518).

¹⁶ *VPR*24, 1398. ¹⁷ Cf. *E* §434, 234 and 483. ¹⁸ *VPR*17, 201.

¹⁹ *VPR*22, 1029. Hegel also speaks of their 'root' in *PR* §310A.

²⁰ It should be noted that churches and local administrations form corporations too (*PR* §270A and §288).

‘unenlightened mass used to blind obedience’ elect its representatives. Hegel is concerned that as long as the basic circumstances are unchanged, with the people not knowing their own rights, a lack of public spirit and unlimited power of officials, popular election will only lead to a subversion of the state. Ideally, Hegel thinks, franchise would have to be located safely ‘in the hands of a corps of enlightened and righteous men independent of the court’, yet this is practically impossible to achieve with any mode of election.²¹ In his philosophy of right, Hegel would sketch a system to approximate this ideal.

Hegel first presented his ideas on the matter of elections to the public in his *Assessment* of the Württemberg constitutional conflict, published in 1817/18. There, he disagrees with the provisions on suffrage contained in the royal constitutional draft for Württemberg, according to which any male citizen aged at least twenty-five with an income of 200 guilders from real estate could vote.²² Beyond the minimum age of thirty years and affiliation with a Christian denomination, electability required neither a certain capital nor a particular occupation, although royal officials, soldiers, clerics and physicians were excepted. Indeed, Hegel considered financial independence one of the fundamental qualities of a competent representative, next to their aptitude. While the former is the main criterion for membership in the first chamber, as we have seen in Chapter 4, the latter especially determines election to the second chamber.

According to Hegel, representatives should not receive a salary (§310A) in order to guarantee their independence.²³ Yet he considers financial restrictions negligible for eligibility to the second chamber. Such restrictions were common at the time, as reflected in the Southern German constitutions or, for instance, Wangenheim’s demand that half of the elected deputies should have assets of at least 8,000 guilders, which allegedly left more than 4,000 Württembergers qualified.²⁴ In his lectures, Hegel also refers to the financial requirements for French and English parliamentarians, yet he saw no need for stipulations of that kind. On the one hand, Hegel considers such a criterion to be merely external (§310A). Corporation membership itself, which excludes, for instance, day-labourers (§252A), guarantees that members are financially fit to act as representatives. On the other hand, Hegel’s institutional framework

²¹ *GW*2, 101, 108, 108.

²² *LW*, 35. The age requirement is missing from Bowman and Speight’s translation in Hegel 2009b, 38.

²³ *VPR*18, 318. ²⁴ [Wangenheim] 1816, 43 and n.

already guarantees that members of the first chamber are financially independent. Remarkably, he seems to consider the condition of the Estates' financial independence fulfilled by the first estate and consequently does not support limitation of membership in the second chamber by a certain amount of property (§310&A). That would constitute an unnecessary 'repetition', even an 'empty formalism'.²⁵ Presumably, Hegel's provisions for the second estate, in turn, provide the Assembly with sufficient 'sense of the state', almost irrespective of its presence in the first. He does mention that such objective qualities are 'all the more' important with the second estate, which is rooted in particular interests subject to contingency (§310A).

Although Hegel rejects any financial requirements for voting as well as eligibility as 'superfluous', his criticism is not primarily aimed at the specifics of such conditions but rather at the underlying principle of *one man, one vote*.²⁶ Concerned about voters' indifference and manipulation, Hegel rejects this 'democratic, even anarchic principle of *individualisation*'. In his view, common suffrage is detrimental to political unity; 'the *French abstractions* of mere *numbers* and *extent of capital*' should therefore be discarded.²⁷ In the *Philosophy of Right*, Hegel explicitly rejects atomism in relation to popular representation in §§303, 308 and 311, maintaining that '*deputies*' (§308) or the 'people's representatives' should not be elected directly.²⁸ Demanding that corporations rather than individuals should vote in order to prevent the dangerous trend of atomisation, Hegel self-consciously presents an alternative to the revolutionary conception of national representation.²⁹ In his model of estate-based representation, political participation is mediated by membership in a corporation and interests rather than people are represented.

A fundamental problem diagnosed by Hegel, and still highly topical in any representative system today, is political apathy. He voices concern that 'especially in large states', individual voters may be seized by the feeling of '*indifference*', as one vote seems a mere drop in the ocean. When, consequently, voters do not turn up, election may fall into the hands of a 'faction' and its 'particular, contingent interest'. The 'institution' of mass elections thus effects exactly 'the opposite of its intended purpose' (§311A). In the lectures of 1824/25, Hegel adduces the examples of Jacobin supremacy during the French Revolution and royalist dominance in the time of the Directorate as well as the small turn-out of voters at

²⁵ VPR24, 1461. ²⁶ VPR17, 201. ²⁷ LW, 44, 45. ²⁸ VPR17, 201.

²⁹ As observed by Pöggeler 1983a, 77; 1983b, XLII.

Prussian municipal elections.³⁰ These show that one simply cannot rely on individuals' sense of civic duty; their attitudes are far too 'subjective, arbitrary and contingent'.³¹ Surely, Hegel thinks, nobody would want to emulate the model of a National Assembly populated by 'comedians, lawyers, wild Capuchins etc'.³² 'The question', as he puts it in the lectures, is how to guarantee that 'deputies are organs of the interest of the state and of the particular interests'.³³ In contrast to universal suffrage, Hegel offers his answer in the form of a model of election via corporations meant to except results from 'the contingent patriotism of individuals' who may or may not vote.³⁴ Once more, Hegel places all his trust in rational institutional design and that leads him to reject the French revolutionary model of national representation.

It follows that the chosen deputies are not '*representatives as of individuals*', but '*representatives of one of the essential spheres of society*' (§311A). This is the heart of Hegel's theory of representation, meant to realise 'the end of the state', which consists in 'the universal interest as such and within it, as their substance, the conservation of particular interests' (§270). In Hegel's model of corporate election, interests rather than people are represented.³⁵ In the lecture transcripts of 1824/25, he is recorded as saying explicitly – and Gans included this in adapted form in the 1833 edition of the *Philosophy of Right* – that 'the main thing is not that the individual gets to speak as an abstract individual but that his interest is voiced'.³⁶ Hegel's stress on the communitarian dimension of human life is in evidence here: in the realm of ethical life, which comprises family, civil society and the state, 'the individual as individual' disappears.³⁷ According to Hegel, the 'right to be represented' applies to interests, not individual persons, and is a collective rather than an individual right (§311A). In this way, Rousseau's critique of representation as inimical to freedom, which Hegel explicitly mentions in the lectures, is invalidated.³⁸ Hegel observes that if, indeed, legislation had to be approved individually by all members of a state in order to become binding, majority voting would be impossible. Strikingly, he also concedes that it would be unjustified to exclude the

³⁰ VPR24, 1460. ³¹ VPR18, 310. ³² VPR17, 195. ³³ VPR24, 1460.

³⁴ VPR17, 201.

³⁵ Hegel confirmed this as the crucial point of representation in his 1831 article 'On the English Reform Bill', e.g., at GW16, 361, 365.

³⁶ VPR24, 1460. Cf. PR §309Z. ³⁷ VPR19, 564.

³⁸ See VPR22, 1033; VPR24, 1459. For the insistence that 'the sovereign . . . cannot be represented by anyone but itself', see Rousseau [1762a] 2004, 26 (II,1). On 'Rousseau's Critique of Representative Sovereignty', see Douglass 2013.

female population from political process any longer then, for 'women have this right too, they are individuals, humans that have free will'.³⁹ Yet they remain excluded from political participation and representation in Hegel's theory, as discussed below.

In his quest for a rational constitution, Hegel wants to ensure the adequate representation of the various 'major interests' of society, and his model of corporate election helps to decrease contingency in this respect. Each of 'the essential *spheres* of society' (§311A) is equally entitled to representation, and the structure of Hegel's institutional design guarantees that deputies in the second chamber of the Estates Assembly are well acquainted with the 'special needs, difficulties, particular interests' of civil society (§311). There should be deputies with a background in trade and manufacturing, for example, who bring their expertise to the table. In this way, corporate interests are really 'present' rather than merely 'represented'.⁴⁰ Yet Hegel's design of the representation of interests is characterised by a certain tension. While deputies in the second chamber are required to have a specific background in one of the major spheres of civil society, they are not supposed to advance the corresponding 'particular interest of a municipality, corporation against the universal [interest]' (§309). Instead, they should 'vote and act in the interest [*Sinne*] of the whole' and represent 'the common interest'.⁴¹ Hegel explicitly rejects the notion of political representatives being 'mandatees who are commissioned or delivering instructions', which is at odds with the Assembly's nature as a site of mutual instruction and common deliberation (§309).⁴² As the deputies must act in the interest of the whole, they hold 'no particular instruction but an office', which implies a certain liberality in terms of their range of action.⁴³ Rather than thinking of their own corporation, representatives are obliged to do what is best for the universal interest. It is at this point that Hegel discusses the issue of trust in their superior abilities, expressed in the act of their election.

Hegel's model of election ensures that members of the second chamber, just like those of the first, possess specific qualities. Against those who think that anybody may serve as a representative, he stresses the need for 'general knowledge of the building of the state'.⁴⁴ 'Representation is based on trust', Hegel points out, namely the trust that my representative will

³⁹ VPR24, 1459. ⁴⁰ VPR22, 1034. ⁴¹ VPR17, 194.

⁴² Both Knox and Nisbet translate Hegel's 'Mandatarius' as 'agent', here and at PR §294A. On the controversies surrounding voter instructions for representatives in eighteenth-century Britain and revolutionary France, see Bourke 2015, 379ff. and Rubinelli 2020, 36ff. respectively.

⁴³ GW22, 200. ⁴⁴ VPR17, 194–95.

'treat my affair as his affair, according to his best knowledge and conscience'.⁴⁵ In §309 of the *Philosophy of Right*, he establishes as the very point of deputation 'that through trust such individuals are appointed for it, who are more well-versed in these [public] affairs than those who deputise' them. For Hegel, such trust is founded when candidates have proven themselves in the exercise of public offices. The objective 'guarantee' that deputies will have the necessary 'qualities' and 'disposition' then lies in their experience and '*sense of the state*', gained in '*positions of authority* or *political office*' (§310). In the later lectures, Hegel says that these may be governmental offices but should especially be those 'in the communities, corporations, provinces etc.' occupied by their own members (cf. §288). They may either 'be elected explicitly by individuals to serve as deputies in the Estates Assembly, or they are so *ex officio*'. Hegel considers the former unnecessary because community leaders will already have been elected by their fellows. Here, he seems to follow the old custom according to which German 'mayors were deputies of the third estate *ex officio*'. As examples, he mentions 'magistrates'⁴⁶ as well as 'mayors' and 'parish councillors'.⁴⁷ In order to have advanced to such positions, he reasons, their holders must have demonstrated their abilities and by executing their office, they will have acquired expertise and a sense of authority.⁴⁸ This qualifies them to act as representatives.

Hegel had already expressed much the same views in his *Assessment*, stressing 'the element of disposition' and the 'basic characteristic' of representatives, which may be called 'the *sense of the state*'.⁴⁹ Without a doubt, Hegel considered the old Württemberg Estates, whose abuses he discussed at length, lacking in this respect. He also hinted at the importance of electors' background, a problem solved in the *Philosophy of Right* by recourse to election through corporations. In practice, there is little chance involved in Hegel's model of election since he wants it to be 'limited to official [*obrigkeitliche*] persons'.⁵⁰ As he says, voting is thereby rendered virtually 'superfluous', or at least 'reduced to a slight play of opinion and arbitrariness' (§311). Average Joe is unlikely to end up being a representative, because those most distinguished by intelligence and experience will be elected. At the same time, Hegel's system retains the possibility for anybody to distinguish themselves and consequently become elected.

⁴⁵ VPR24, 1459 -PR §309Z.

⁴⁶ VPR24, 1461.

⁴⁷ VPR22, 1032 [*Gemeindevorsteher*].

⁴⁸ VPR24, 1461.

⁴⁹ LW, 39.

⁵⁰ VPR24, 1462.

Overall, Hegel's model of corporate election may be seen as another instrument to reduce the measure of contingency involved in state affairs. The unpredictability of general elections obviously worried contemporaries. It is, for instance, reflected by the fact that Richard Phillips's *Golden Rules for Electors* were translated in 1818 and much discussed in German newspapers.⁵¹ Nor was Hegel the only one who thought of alternatives to elections following the French precedent – far from it. Karl August von Wangenheim, for instance, similarly suggested to have deputies elected by district magistrates, who in turn would be elected by their communities.⁵² Hegel's rival Jakob Friedrich Fries advocated the indirect election of representatives via 'electors' too, suggesting to draw them from a country's various districts.⁵³ Even Hegel's friend Friedrich Förster suggested to assemble Estates in the various regions of Prussia and have each region elect its committee, which would then convene in Berlin.⁵⁴ Yet Hegel rejected geographical representation, perhaps most emphatically in his article on the English Reform Bill. This final publication of Hegel's definitively demonstrates how far from exemplary Britain was for him in terms of its electoral system. Already several years earlier, Hegel admitted that all of this was 'a difficult chapter because of the many misconceptions' circulating about it.⁵⁵

The significance of Hegel's idea of corporate election at the time derived from its offer of an alternative to both the old estate-based system and the problems of modern political life following the French Revolution. Simultaneously, it ensures that all the major spheres of society are represented and does away with the fortuitousness involved in universal suffrage as individuals may or may not vote. The actual outcome of an election is rendered less relevant by Hegel's provisions, which guarantee that the universal interest will be represented. Informed by a fear of the rabble and its lacking knowledge of the good, Hegel's institutional theory leaves as little to chance as possible. As put in the *Assessment*, he wanted 'to except the aim of finding capable deputies for an Estates Assembly from contingency'.⁵⁶

Recently, Hegel's corporatist conception of representation has been criticised as 'un-modern and un-constitutional', 'remarkably regressive and backward-looking' as well as 'archaic'.⁵⁷ While the yardstick applied here seems highly dubious from a historian's point of view, one may also counter these reproaches substantively. After all, Hegel does not advocate

⁵¹ Phillips 1818, 531.

⁵² [Wangenheim] 1815, 277; 1816, 62.

⁵³ Fries 1816, 176.

⁵⁴ Förster 1818a, 348.

⁵⁵ VPR24, 1462.

⁵⁶ LW, 46.

⁵⁷ Lee 2008, 602–3.

the old form of estate-based representation but criticises it substantially, as I have shown since Chapter 1. In the *Assessment*, his first public statement on the matter, Hegel postulates a fundamental difference between the old (Württemberg) Assembly and ‘this new creature, the Estates [*Landstände*]’.⁵⁸ He even endeavours to indicate the difference between his conception of Estates and the traditional one by using the term *Stände* rather than *Landstände* throughout the *Philosophy of Right*. In later lectures, he only uses the latter term in a historical sense.⁵⁹ While the terminological difference is lost in English translation, Hegel’s form of representation is routinely referred to as *neuständisch* in the Germanophone literature.⁶⁰

This sets Hegel apart from contemporaries who share his opposition to atomism but advocate older forms of political representation. Adam Müller, for instance, equally rejects the notion of popular sovereignty and the atomistic principle of ‘a new-fangled representation of heads, souls or money’. Conceiving of the state as an organism too, he demands that ‘the live members of the state and not its dead atoms, the permanent Estates and not the transient heads should be represented before the ruler’. Yet Müller advocates a return to ‘the age-old *German Estates*’, which places him squarely with the advocates of the so-called good old law who harked backed to the status quo ante Napoleon.⁶¹ Such ambition could not be further from Hegel. Demanding that modern corporations mediate political participation, he self-consciously presents an alternative to both the revolutionary conception of national representation and the old form of representation by Estates.

Another commentator who emphasises the changed meaning of Hegel’s Estates has dwelled on how ‘strange’ these institutions seem today. Viewed in the context of his own time, however, Hegel’s ‘emphasis on the estates’ is not odd at all.⁶² To Marx, it was obvious that Hegel engaged ‘the controversial question of *representative* and *estate-based* constitution’.⁶³ Unfortunately, Marx does not satisfactorily elucidate the dispute. It is beyond doubt, however, that a simple opposition between the system of the old Estates and an allegedly modern constitution is over-simplified, and to hold up the Prussian reformers’ plans as a gold standard is

⁵⁸ *LW*, 52. ⁵⁹ See *VPR*22, 1024 – *PR* §298Z.

⁶⁰ For example, in the title of Jamme 1986 or in Boldt 2000, 189. ⁶¹ Müller 1816, 10, 13, 10.

⁶² Yeomans 2017, 470. The author acknowledges Hegel’s innovation when he speaks of ‘a repurposing of the estates system’ and ‘Hegel putting an old institution to new use’ (*ibid.*, 480, 481).

⁶³ Marx [1843] 1982, 85: ‘die Streitfrage zwischen *repräsentativer* und *ständischer* Verfassung’.

unhelpful.⁶⁴ The history professor Friedrich Raumer, for instance, considered it ‘a principal mistake ... to set estate-based and representative constitutions against each other unconditionally’ and ‘a principal task to combine these elements expediently’.⁶⁵ Arguably, his esteemed colleague Hegel, whom Raumer had scouted for the university of Berlin and recommended for appointment after a visit to Nuremberg in 1816, was engaged in that very cause.⁶⁶

Despite certain similarities with the conception of Estates as representing corporate interests espoused by Friedrich Gentz, who was both Adam Müller’s mentor and Metternich’s advisor, the central role played by corporations has generally been recognised as a unique feature of Hegel’s political thought.⁶⁷ Yet Hegel’s focus on corporations does chime with a broader contemporary concern over reform of the guild system. The latter is testified by the 1815 prize essay question posed by the Royal Society of Sciences at Göttingen, which asked how ‘the guild constitution’ could be ‘most expediently modified’ such as to retain its advantages while shedding its disbenefits.⁶⁸ Two acclaimed entries were reviewed in the pages of the *Heidelberg Yearbooks* while Hegel was their co-editor.⁶⁹ The unknown reviewer of both, who may well have been the same person, disagrees with the assumption that guilds have any merit altogether and makes a strong case for freedom of trade. In this context, an undated note written by Hegel seems pertinent, in which he declares that ‘nowadays, *freedom of trade* means the opposite of what it used to mean’.⁷⁰ While formerly, guilds possessed exclusive privileges, in the modern world of Hegel’s day, virtually anybody may choose to exercise their trade.

In his lectures of 1824/25, Hegel identifies ‘the community, the corporation’ in its opposition to ‘the principle of abstract equality’ as ‘the big issue currently at stake in relation to the constitution’.⁷¹ Several of the lecture transcripts show that he considered corporations to be particularly strong in England, although his remark on §245 of the *Philosophy of Right* relates the ‘abolition of the corporations’ in England to the presence of

⁶⁴ As Lee 2008 seems to do. A classic account of the Prussian reform movement is contained in Koselleck 1967; the retrospectivity of that very label and the contingency of its liberalising effects is emphasised by Tribe 2018.

⁶⁵ Raumer 1821, 358. ⁶⁶ See *BII*, 105–6: Raumer to Hegel, 7 August [1816].

⁶⁷ E.g., Bowman 2014, 49. Hočevar 1968 offers a contested account of the similarities between Gentz and Hegel.

⁶⁸ *Heidelberger Jahrbücher* 1818, title. ⁶⁹ *Heidelberger Jahrbücher* 1817, 1818.

⁷⁰ *GW*22, 199.

⁷¹ *VR*24, 1397 [der große Punkt, um den es sich gegenwärtig in der Welt in Beziehung auf Verfassung handelt].

extreme wealth and poverty.⁷² In contrast, they were virtually missing in France, where the Revolution had introduced centralisation, which was only enhanced by Napoleon. Three decades after the event, Hegel judges that 'during the French Revolution, public opinion poured its hatred particularly onto the corporations'. He is sympathetic to the sentiment, given their history of abuse, having become 'states within the state'. Nonetheless, it has been a mistake to overlook the importance of corporations in the 'Spanish and French constitutions'. Reform rather than abolition is needed because 'the real strength of states' lies in their self-administering communities, 'especially with regard to attitude'.⁷³ Serving 'as a *second* family' for their members (§252), corporations inspire a sense of community, which, Hegel thinks, will spill over into the state at large, infusing it with 'public spirit'.⁷⁴

With regard to supposed parallels between Hegel's corporations and the medieval guild system, Hegel's scepticism towards the latter is pertinent.⁷⁵ Characteristically, the student Carl Homeyer notes Hegel's 'rant against the middle ages' in the lecture transcript for 1818/19.⁷⁶ While Hegel mentions the origin of 'associations and corporations' in the middle ages as 'the great beginnings of internal lawful relations in Germany',⁷⁷ he clearly diagnoses a negative development towards 'an entirely restrictive formalism and guild-spirit', even 'aristocratism'. Hegel wanted the 'lower spheres' of society to gain a political function but 'purified of privileges and injustices'.⁷⁸ With view to 'the old imperial cities', for instance, he laments 'a spirit of small-townery'.⁷⁹ The latter had been vividly portrayed in August von Kotzebue's successful play from 1803 entitled *Die deutschen Kleinstädter* (*The German Small-Towners*).

There are also significant conceptual differences between the traditional guild system and Hegel's model of corporations. In contrast to feudal guilds, for instance, corporations as envisioned by Hegel do not possess any '*privileges*' excepting them from 'the universal law' (§252A). Again, he insists on this circumstance especially with an eye to developments in

⁷² The connection is even more explicit in *VPR19*, 509.

⁷³ *VPR19*, 556; *VPR24*, 1443; *VPR22*, 1032; *VPR24*, 1443; *VPR24*, 1443.

⁷⁴ *VPR17*, 181 [*Gemeingeist*]. Cf. *PR* §289A: 'Geist des Staats'.

⁷⁵ Lee 2008 speaks of 'The Legacy of Medieval Constitutionalism in the *Philosophy of Right*' and claims 'that Hegel has in mind here the medieval pattern of guilds is beyond doubt' (623), although he registers Hegel's disdain for 'the miserable guild system' (630; *PR* §255Z). For a balanced assessment of 'Hegel on the Medieval Foundations of the Modern State', see Nederman 1987. Heiman 1971 argues for the legacy of Roman law in 'Hegel's corporate doctrine' but emphasises the latter's distinctiveness against earlier forms of corporatism.

⁷⁶ *VPR18*, 314 [*Ausfall*]. ⁷⁷ *LW*, 44. ⁷⁸ *LW*, 45. ⁷⁹ *VPR24*, 1403.

France, 'where corporations and privileges have been much hated since the Revolution'.⁸⁰ Above all, while 'everybody must belong to a certain estate for their civil existence (as bourgeois)',⁸¹ Hegel advocates the free choice of occupation (§§251–52), which had, for instance, been introduced in the Prussian heartlands in 1810. Indeed, he claims, the choice of one's own estate distinguishes 'political life' in 'the modern world', at least in the 'occident', from systems like 'the *Platonic* state' or 'the *Indian castes*', where each individual is allocated their fixed place in society, by 'the rulers' or by 'mere birth' (§206A). According to 'the principle of subjective freedom' (§299A; see Chapter 2), each member of society may enter any corporation in accordance with their individual 'ability'. Significantly, this stipulation equally applies to 'the universal estate' (§308A), with Hegel advocating careers open to talent in the civil service (§291). In contrast to full economic freedom as practiced in England at the time, however, Hegel accords corporations the right to regulate their membership (§252). The question of membership carries special significance due to the corporations' role as 'medium of integration' or 'the site of public existence'; it determines who is involved in choosing representatives.⁸²

Corporation Membership and Exclusion

With the Estates representing larger societal interests, inclusion in the political process is determined at the level of civil society. As political participation is mediated by membership in a corporation in Hegel's model of estate-based representation, whoever is excluded from it may not participate in the act of selecting deputies for the second chamber of the Estates Assembly and is thus effectively disenfranchised. While all may hold the right to subjective freedom as a person, many – such as the unemployed, wage labourers or any women – are not part of the spheres that are represented in the Estates Assembly. Hegel thus strictly differentiates between human rights, which everyone possesses (§209A), and political rights, which are enjoyed only by a fraction of the population.

Significant portions of the population are thus excluded from the political process altogether. This is obvious from the remark on §301 of the *Philosophy of Right*, where Hegel dispels the pretence of inclusiveness found in the common talk of '*all*' in reference to the 'public consciousness' expressed by the Estates Assembly. Really, '*the many*' are meant here, for the exclusion of 'children, women etc.' passes for a 'self-evident' fact

⁸⁰ VPR24, 1397.

⁸¹ VPR17, 145.

⁸² Cullen 1979, 103; Bowman 2014, 50.

(§301A). The ‘etc.’ presumably includes persons with mental illnesses and the poor as well as the unemployed, who cannot participate in civil society. In the lectures, Jews too are described as standing outside civil society due to their supposedly traditional occupations.⁸³ Hegel himself supported Jewish emancipation (§270A, n. 2) and had several personal connections to members of the Jewish community in Berlin, notably helping Eduard Gans to establish an academic career. He notes, however, that Jews are being reproached with pursuing only one branch of industry, namely trade. His antagonist Jakob Friedrich Fries, for instance, referred to them as ‘a caste of brokers and peddlers’ (among other slurs) in a pamphlet tellingly entitled *On the Endangerment of the Germans’ Prosperity and Character by the Jews*.⁸⁴ Hegel’s point is that if members of the Jewish community continue in their supposedly traditional occupations for reasons other than their own individual preference, then they contradict civil society’s principle of the free choice of estate themselves. Further, Hegel considers the exclusion of ‘day labourers, servants, etc.’ from corporation membership to be ‘self-evident’.⁸⁵ In practice, it has been observed, ‘corporation membership is open mainly to the male urban middle class’.⁸⁶ In Hegel’s time, such exclusionary practices were the norm.⁸⁷ Still, I want to address his complete exclusion of women from politics of which, as we have seen earlier, he was quite self-aware.

Like the overwhelming majority of his contemporaries, Hegel excludes women from public life, restricting their sphere of action to the household alone. ‘The *natural* determinacy of the two sexes’ is interpreted as rational by Hegel and therefore ‘acquires an *intellectual* and *ethical* significance’ (§165).⁸⁸ Supposedly, man has ‘his actual substantial life in the state, in science and suchlike’ (§166), and all of the lectures explicitly add the arts here.⁸⁹ In contrast, woman’s alleged determination or vocation [*Bestimmung*] is ‘the family’ and ‘her ethical disposition’ consists in ‘*piety*’ towards it (§166). The prime example of the latter is the figure of Antigone

⁸³ See VPR24, 1385.

⁸⁴ Fries 1816b, *Ueber die Gefährdung des Wohlstandes und Charakters der Deutschen durch die Juden*, 12.

⁸⁵ VPR17, 201. Cf. PR §252A where Hegel distinguishes clearly between a ‘tradesman’ and a ‘day labourer’.

⁸⁶ Wood 1991, xx. Cf. Wood 1990, 243–45. See, for instance, Ruda 2011 on *Hegel’s Rabble* and the discussion of wage labourers in Cullen 1979, chapter 6.

⁸⁷ Yet Hegel’s nemesis Friedrich Schlegel for one advocated suffrage for women and the poor; Schlegel 1796, 23.

⁸⁸ Cf. Rousseau’s influential *Émile* 1762b, Book V, where moral significance is attached to sex differences.

⁸⁹ VPR17, 85; VPR19, 442; VPR21, 705; VPR22, 932; VPR24, 1288; cf. VPR18, 291.

in Sophocles's eponymous play, who defies 'the law of the state' but adheres to the deeper, 'eternal law' in burying her beloved, outlawed brother. Hegel sees 'femininity and masculinity individualised' in this very contradiction (§166A).⁹⁰ In this context, one may observe that Hegel's conception of the 'beautiful natural ethical life' of woman is far from dismissive.⁹¹ Hegel thought women were more at one with themselves and characterised by harmony, whereas men were more conflicted and bound to struggle (§166). It was these characteristics he saw represented in the metaphors of plant, or specifically flower,⁹² and animal, respectively. While woman is already everything she is supposed to be, man must overcome his inner conflicts to find or become himself. To some extent, Hegel here follows Friedrich Schiller, whose 1797 poem 'Tugend des Weibes' ('Woman's Virtue') is repeatedly invoked in the lectures.⁹³ It underlines the view that women, in contrast to men, have no need to expose themselves to the world in order to find fulfilment, and thereby seems to justify women's assignment to domestic life.

It is important to register that Hegel supports this position with the argument for equal rights. He espouses a fairly emancipated conception of marriage based on mutual love and puts an emphasis on the will and rights of the wife, which is not to be taken for granted (§§161–63, 167). Nonetheless, Hegel restricts women's sphere of activity to the household and thereby excludes them from civil society and politics. Insisting that women have the same subjective rights as men, he sees them fulfilled in modern monogamous marriage, in contrast to polygamy, where women are treated as 'slaves'.⁹⁴ Although Hegel 'explicitly thought of his

⁹⁰ Cf. Hegel's discussion of 'the ethical world, the human and divine law, man and woman' in the *Phenomenology* (GW9, 241–51; Antigone is explicitly mentioned *ibid.*, 236 and 255). Especially Hegel's comments on Antigone in his *Lectures on the Philosophy of Religion* have become a classic point of reference for the play's interpretation (see Hegel 1986d, 132–33). He also praises *Antigone* in his *Lectures on Aesthetics* (see Hegel 1986e, 60; 1986f, 549–50). Hegel admired the play from his days as a schoolboy and made his own translations of it, as Rosenkranz 1844, 11 reports. His library contained editions of Sophocles's works in Greek from 1544 (K 404), 1555 (K 488) and 1786 (K 411–12). Several translations and interpretations of *Antigone* appeared contemporaneously. In 1804, Hegel's friend Friedrich Hölderlin published a translation accompanied by a short commentary and in 1808, his later colleague Karl Wilhelm Ferdinand Solger provided another translation in his edition of Sophocles's works in two volumes (K 248–49). Hegel praised the latter as 'still the best' in 1828 and commended its 'rich *preface*' (Hegel 1986g, 208). Solger's interpretation of tragedy is also treated in the context of Hegel's influential theory of irony in *PR* §140A, n. 3. *Antigone* also featured in works by Hegel's former student Hermann Hinrichs (1827, as a gift in K 817: *Wesen der antiken Tragödie*) and another Berlin colleague, August Boeckh (1824).

⁹¹ *VPR*24, 1287. As Wood 1990, 245 notes, Hegel's 'is hardly a vision of woman as generally stupid, submissive, weak, or incapable'. See Jagentowicz Mills 1996 for *Feminist Interpretations of G. W. F. Hegel*, as well as Hutchings 2003 and Hutchings and Pulkkinen 2011.

⁹² *VPR*19, 443. Cf. *VPR*18, 292. ⁹³ It is fully cited in *VPR*19, 445. ⁹⁴ *VPR*24, 1291.

conception of the family as nonpatriarchal and even somewhat egalitarian', he regards the 'estate' of woman to be that of the 'housewife'.⁹⁵ In Hegel's civil society, the husband as 'head' of the household represents 'the family as a legal person to others', and although family property is shared, he holds the right to its primary disposition (§171). Women thus neither enter the transactions of civil society, nor do they partake in political affairs: 'the state is . . . the element of man', whereas the family constitutes the domain of woman.⁹⁶ This exclusion of women from politics is underpinned by Hegel's very conception of the different natures and capacities of male and female human beings.

Hegel admits that there have been gifted female scientists and brilliant female artists. He was especially fond of several opera singers of the period and mentions the painter Angelika Kaufmann in his lectures, yet he treats these cases as mere exceptions from the rule. Hegel also acknowledges that women may be well educated, as seems to have been the case with his own mother, who taught him Latin at home, and his sister Christiane.⁹⁷ Nonetheless, he claims that women's expertise is always restricted to particulars rather than approximating 'the pure science of universality, of thinking'.⁹⁸ They may be successful at 'entirely positive sciences', such as 'midwifery', 'medicine, anatomy, chemistry, botany', 'culinary art and jurisprudence' – this was certainly intended as an insult to Hegel's rivals in that latter department rather than a compliment to women's intellectual capacities.⁹⁹ Yet they are said to lack true genius and an eye for the bigger picture that 'abstract knowledge' opens up.¹⁰⁰ The terrible conclusion registered in the lecture transcripts of 1818/19 is that 'women don't get far in thinking'.¹⁰¹ Notwithstanding his loving relationship with his wife Marie, great reverence for his mother and considerable affection for his sister Christiane, Hegel seems to have had a hard time taking women seriously on an intellectual level. For instance, the husband of Rahel Varnhagen, a famous Berlin salonnière, registered Hegel's somewhat dismissive attitude towards her, who had even studied his *Encyclopedia*.¹⁰² In short, Hegel thought that 'philosophy is not for women'.¹⁰³

⁹⁵ Pinkard 2000, 481, 482, 482. He cites from Hegel's own notes on *PR* §167. ⁹⁶ *VPR*19, 443.

⁹⁷ Pinkard 2000, 4. Hegel's mother, Maria Magdalena Louisa, died of a bilious fever when he was only eleven (*ibid.*, 3).

⁹⁸ *VPR*24, 1287. ⁹⁹ *VPR*18, 291; *ibid.*; *VPR*24, 1287; *VPR*18, 291. ¹⁰⁰ *VPR*19, 442.

¹⁰¹ *VPR*18, 291.

¹⁰² See Nicolin 1977, 332; cited in Pinkard 2000, 482. The copy of the 1827 *Encyclopedia* from the Varnhagen library, dedicated by Hegel to Karl August, bears testimony to Rahel's readership (Hegel 1827b). For Rahel Varnhagen's biography, see Arendt [1959] 1981.

¹⁰³ *VPR*21, 705.

These views, imputing knowledge of the universal and the particular to man and woman respectively, carry clear political implications. According to Hegel, 'woman has to rule the house, man the state'.¹⁰⁴ Whereas her destiny is completely fulfilled in marriage, he has to go beyond it. The stereotype of emotional women driven by '*sentiment*' clearly has its place in Hegel's thinking too (§166). According to this notion, their behaviour is less reliable than men's, as their courses of action are in greater degree susceptible to caprice and contingency. It is this essentialising account of a presumed female nature that underlies the claim that a state governed by women is doomed to failure. A remark included in the 1833 edition of the *Philosophy of Right* by Gans declares that 'when women are heading government, the state is in danger'.¹⁰⁵ While Hegel had chosen not to immortalise this view in print, he seems to have mentioned it in every one of his lecture courses.¹⁰⁶ It is telling that while the Amazons are conspicuously absent from Hegel's considerations, the transcript of his first lectures given in Berlin contains a reference to Aristophanes's comedy *Assemblywomen*, which completely ridicules the very notion of political power in the hands of women.¹⁰⁷

In particular, Hegel thought, women would fail to 'separate person and matter' and become entrapped in 'intrigue' and 'consideration for persons' in a negative sense.¹⁰⁸ Over 'the particular' and 'the personal', women would forget to care for the universal.¹⁰⁹ In contrast, men's being 'more one-sided' enables them to achieve 'the negation of individuality' and thereby to acquire the kind of 'concentration' necessary for ruling.¹¹⁰ Unsurprisingly, Hegel enlists history to support his reasoning, pointing out that 'on the whole, it cannot be said of any woman that she had been epoch-making in world history'. All examples of Hegel's famous world-historical individual are male and, according to Hegel, this is no coincidence. What inspires them to historical deeds is precisely the kind of 'infinite internal strife' that women, being characterised by harmony, do not possess.¹¹¹ There is an obvious parallel here to the notion that 'periods of happiness are empty sheets' in the history of the world.¹¹² As explained above, however, Hegel's exclusion of women from politics goes much

¹⁰⁴ VPR22, 933. ¹⁰⁵ PR §166Z, cited according to Nisbet's translation.

¹⁰⁶ VPR17, 85 [*Untergange*]; VPR18, 292 [*Verfaulung*]; VPR19, 444–45 [*Staat krank*]; VPR21, 706 [*im Begriffe umgestürzt zu werden*]; VPR22, 933 [*Gefahr*]; VPR24, 1290 [*geht es schlecht*].

¹⁰⁷ VPR18, 293. Hegel's library contained editions of *Aristophanis comediae* from 1532 (K 401) and 1586 (K 422).

¹⁰⁸ VPR24, 1289; VPR19, 444; *ibid.* ¹⁰⁹ VPR19, 445, 444.

¹¹⁰ VPR19, 443; VPR22, 933; VPR19, 443. ¹¹¹ VPR19, 443. ¹¹² VPG, 42.

further than denying them the capacity to rule successfully. As his opinions on women are contentious and ambivalent, their discussion could be expanded endlessly, yet we shall leave them at this point.

It is also worth addressing the question of the political representation of farmers in Hegel's system of estate-based representation. At least since the French Revolution, contemporaries were concerned with the political standing of the peasantry. In constitutional practice, concessions for their inclusion were increasingly being made.¹¹³ The *Address of Koblenz*, signed by thousands of inhabitants of the Prussian Rhineland and presented to State Chancellor Hardenberg in 1818, insisted that the *Bauernstand*, the estate of farmers, had 'the right . . . to be admitted to the representation of estates'.¹¹⁴ The spokesman Joseph Görres reported Hardenberg's agreement to 'grant this estate the right to its own representation'.¹¹⁵ As mentioned in Chapter 1, the *Address* formed part of Hegel's library and his protégée Carové had allegedly signed it. Others too had recognised 'the urgency of granting farmers their own representation in the constitutions', as one author put it in the title of his article, and had made similar demands before.¹¹⁶ Some even demanded a separate chamber to represent the rural population.¹¹⁷ Friedrich Förster, who was to become a close friend of Hegel's, pointed out that peasants had been part of the Estates in the part of Pomerania that Prussia had recently gained from Sweden. Even if the Pomeranian nobility did not want to acknowledge this, he argued, Prussian experience itself thus showed 'that this estate is able to represent the people's right for its part too'.¹¹⁸

Hegel is not very outspoken on the topic, with little explicit mention of farmers in the *Philosophy of Right*. Clearly, the corporation is a form of organisation peculiar to the estate of industry and trade (§250). Those concerned with agriculture, in contrast, do not form corporations,¹¹⁹ and consequently do not send deputies to the second chamber. Still, it would be mistaken to claim that Hegel 'completely neglects' farmers and reserves no place for their representation.¹²⁰ For, in fact, farmers are included in the first estate on Hegel's model of civil society. Although unconventional, this is hardly surprising when we recall its characterisation as an agrarian

¹¹³ Boldt 2000, 191. ¹¹⁴ [Görres] 1818, 33 [zur ständischen Vertretung].

¹¹⁵ [Görres] 1818, 35.

¹¹⁶ Georg 1817. Krug 1816, 47, n. and 49 also emphasised the need to establish a fourth estate for the peasants.

¹¹⁷ E.g., Witthöft 1815, §6 according to Dahlmann 1815, 48 who calls this a 'highly infelicitous idea'.

¹¹⁸ Förster 1818a, 342. ¹¹⁹ This is made explicit in *VPR* 19, 509.

¹²⁰ As Lübke-Wolff 1981, 490 does.

estate with firm ties to the land. In his comments on the *Philosophy of Right* from 1843, Karl Marx, who was taught by Eduard Gans, even refers to the first estate as *Bauernstand*.¹²¹ The same term is also used in several of the lecture transcripts.¹²² Hegel prefers to speak of the 'agricultural estate' in the *Philosophy of Right*, which includes both those who own and those who cultivate the land (§250, cf. §203).

In the *Encyclopedia*, Hegel indicates a further differentiation of estates after the basic one into three estates, namely the agrarian, industrial or business and universal.¹²³ Within the industrial estate, for instance, one may distinguish 'the estate of trade' from artisans and manufacturers.¹²⁴ With regard to the first estate, such further differentiation is made explicit in a passage from later lectures, which Gans added to §306 in the 1833 edition of the *Philosophy of Right*. According to it, 'the estate of landowners' comprises an 'educated' section and 'the actual estate of farmers'.¹²⁵ Another set of lectures corroborates that there is 'on the one hand, the small owner, the estate of farmers' and 'on the other hand, the nobility, the great landowner'.¹²⁶ In the same vein, Hegel speaks of the hereditary landowners constituting the first chamber as but a specific 'part of the substantial estate' rather than its entirety (§307). He thus transcends the old division of society into the estates of nobility, clergy and a third estate consisting of townsmen and farmers.¹²⁷ Including those who cultivate the soil in the first estate as well as those who own it, Hegel dissolves the previously noble estate into an agrarian estate, together with non-noble landowners and farmers.¹²⁸

Yet the same lecture transcript in which the first estate is declared to consist of both landowners and farmers contradictorily records that 'lesser landowners', 'farmers' and 'industry' are subsumed under the second

¹²¹ Marx [1843] 1982, 103 and passim.

¹²² *VPR*17, 116; *VPR*18, 294; *VPR*22, 967 and 1030; *VPR*24, 1360. *VPR*22, 965 mentions 'Stand der Landbebauer'.

¹²³ *E* §437.

¹²⁴ *VPR*7, 117. Stewart and Hodgson have translated Hegel's 'Stand' as 'class' here (Hegel 1995, 183), even for 'Gewerbsstande', which clearly refers to the second estate of civil society. On the difference between estate and class as one between functional differences and mere inequalities, see Wood 1990, 251. For more, see the entry 'Stand, Klasse' in Brunner, Conze and Koselleck 1990, vol. 6, 155–284.

¹²⁵ *VPR*22, 1030. ¹²⁶ *VPR*24, 1456.

¹²⁷ For instance, [Wangenheim] 1815, 237 accepts this division and speaks of a 'Bürger- und Bauernstand[es]'.

¹²⁸ *PR* §203 explicitly mentions cultivation. Yeomans 2017, 479 also speaks of 'Hegel repurposing the political function of the nobility by recasting its role with the agricultural estate as a whole'.

estate.¹²⁹ Although the sentence in question is grammatically flawed and thus seems a little confused, it must arguably be taken seriously, given how much countless interpreters of Hegel, the present one included, have generally relied on Gustav Hotho's transcript of the lectures from 1822/23, which served as the basis for many of Gans's additions to the 1833 edition of the *Philosophy of Right*. The sentence in question occurs under the heading of §308, where Hegel treats 'the *moveable* part of *civil society*', and indeed he repeatedly registers a change in the nature of the estate of farmers.

Hegel explains that while traditionally farmers were less dependent on trade, they have now become enterprising too and participate in the 'speculation' characteristic of the market society. Consequently, they have grown less self-sufficient and more dependent on 'the needs of everyone else'. In recent times, the agricultural estate has in fact 'passed over to the industrial estate' and 'agriculture is exercised more like a factory [*Fabriksache*']'.¹³⁰ With Gans's edition, virtually the same comment found its way into the *Philosophy of Right* and the addition to §203 confirms that the estate of farmers 'takes on a character like that of the second estate'.¹³¹ While this trend seems universal, it proceeds according to a different pace in different places. Hegel observes that the tendency to treat land as 'a material to be used factory-like' is especially pronounced in England, where there are 'no more farmers like e.g. in Southern Germany'.¹³² It seemed undeniable that the market was gaining ground in all spheres of civil society, and Hegel observes a similar trend towards 'trade in goods' among the nobility. Nonetheless, he insists that 'the trade in goods is against the principle of these estates', meaning the farmers and landowners constituting the first estate.¹³³ Although recent developments seemed to contradict it, Hegel affirmed a clear-cut juxtaposition of land and town as the rational differentiation of estates (§256A).

The entire agricultural sector is based on the 'life of family and nature' (§250), and the farmers' place in Hegel's model of society and state is alongside the landowners in the first estate. Accordingly, they do not participate in sending deputies to the second chamber of the Estates Assembly. As discussed in Chapter 4, however, the first chamber is composed of hereditary landowners only, due to the quality of independence afforded by their inalienable property. Starting from an approach to

¹²⁹ VPR22, 1032. ¹³⁰ VPR17, 143, 114, 115, 115.

¹³¹ Cited according to Nisbet's translation. Cf. VPR22, 1031.

¹³² VPR24, 1334. The trend in England is already observed in VPR17, 143. ¹³³ VPR24, 1334.

representation based on 'the politics of presence', farmers would thus seem to be excluded.¹³⁴ If we take Hegel's perspective, things look differently. To him, individual participation is completely subordinate to the representation of the several spheres of society and their interests, and that hereditary landowners should sit in the chamber representing the first estate is a contingent factor of socio-political life. It just happens in the same way as average Joe handyman is unlikely to sit in the other chamber, because those most distinguished by intelligence and experience will be elected (§309 and §310). With his focus on the representation of interests rather than individuals, inclusiveness is simply not a criterion for Hegel, and one may question how comprehensive the universal interest thus brought into existence by the Estates really is.

Public Opinion and Freedom of the Press

Beyond the qualities of representatives and the mode of their selection, Hegel and his contemporaries also considered which framework conditions would best enable the effective functioning of a representative system, and the remainder of this chapter will explore these discussions. In his early lectures, Hegel emphasised the need for individual rights to be guaranteed through the public administration of justice and trials by jury and that the rights of communities must be ensured by granting them self-administration.¹³⁵ An especially important role is also played by public opinion and the freedom of expression, particularly through the press. It is no coincidence that both are discussed under the heading of 'the legislative power' in the *Philosophy of Right*, for in the political imagination of the period as today, they were intricately connected to popular representation. According to many contemporaries, you could not have one without the other. Most advocates of constitutionalisation agreed on the essentially public nature of Assembly sessions and the importance of press reporting to provide the general public with the means to stay informed of proceedings in the Estates.¹³⁶ Friedrich Buchholz, for instance, called it 'the first condition of effective national representation'.¹³⁷ Hegel too

¹³⁴ Phillips 1995. ¹³⁵ *VPR*17, 200.

¹³⁶ Hölscher 1978, 446 agrees that *Öffentlichkeit* played 'a key role in the German constitutional debate since 1815', as did *öffentliche Meinung* (ibid., 450, 454). Statesmen like Hardenberg and Metternich recognised the latter's importance too and tried to mobilise it; Hofmeister-Hunger 1994, 16.

¹³⁷ Buchholz 1815, 522. Zachariä 1839, 208 even refers to the representative constitution as '*the rule of public opinion*'.

intrinsically connects ‘publicity [*Oeffentlichkeit*]’ (§314) and, somewhat more ambivalently, freedom of the press (§319) to representation within a constitutional monarchy.

To say that in Hegel’s model ‘the assembly’s function must be less to legislate, than to publicize’ is exaggerated if we consider its share in legislation as discussed in Chapter 3.¹³⁸ Yet Hegel undoubtedly considered it one of the Estates Assembly’s main functions to provide ‘the *political education*, which a people and its heads need’.¹³⁹ He first expressed this view in the context of Württemberg’s constitutional conflict, convinced that the old Estates had miserably failed to discharge their duty in this respect. Hegel specifically criticises the form proceedings took in Württemberg’s Assembly of Estates in the years 1815 and 1816, detecting a lack of discussion and liveliness in addition to inefficiency and missing transparency. His Heidelberg lectures of the next year contend that it was no great loss to be rid of ‘the earlier German Estates’, which ‘lacked the requisite’ of publicity.¹⁴⁰ On a more fundamental level, however, an important start had been made in Württemberg, aptly illustrated by the fact that Hegel’s *Assessment* was a review of thirty-three volumes detailing the *Proceedings of the Estates Assembly*. Laying bare the Assembly’s discussions to the general reading public, their very existence was an expression of publicity.

In the *Philosophy of Right*, Hegel confirms the need for ‘the publicity of Estates proceedings’ in order to extend ‘the moment of *universal knowledge*’ (§314). Echoing his earlier phrasing, he describes it as a great ‘means of education’ [*Bildungsmittel*] through which the understanding of state affairs is enhanced among the general public (§315). An Assembly of Estates composed of ‘the noblest and best of the people, and where everything is negotiated’, Hegel contends, forms a site of learning from whence may spring ‘all of the people’s virtues’.¹⁴¹ After all, representatives in Hegel’s institutional design are chosen on the basis of trust in their superior insight into political matters (§309). The distinctive purpose of the Estates consists in involving the members of civil society in public affairs, and Assembly meetings provide the forum in which the general public ‘gets to know and learns to respect the work, abilities, virtues and skills of the state authorities and officials’ (§315). Hegel considered learning from public Assembly proceedings important because, as he puts it polemically, ‘God does not give it [i.e., knowledge of public affairs] in

¹³⁸ Yeomans 2017, 484.

¹³⁹ *LW*, 114.

¹⁴⁰ *VPR*17, 202.

¹⁴¹ *VPR*17, 203.

sleep, and much that is reasoned on the ale-bench is wrong and useless'.¹⁴² A public Estates Assembly familiarises members of the general public with state affairs and equips them with the 'ability to judge them more rationally' (§315). Here, individuals learn about the true universal interest of the state and public opinion may become somewhat enlightened or refined.

Although he considered the thought that everybody understood the affairs of state 'absurd' (§308A), Hegel was a great champion for increased education and evidently placed great hopes on the enlightening effects of political debate. Yet it seems mistaken to claim that he considered publicity 'only as a means of education for the individual',¹⁴³ when it also has a role to play in satisfying the principle of subjective freedom (§314). As seen in Chapter 2, modern individuals hold 'the right to recognise nothing that [they] do not perceive as rational' (§132A). In order for citizens to respect their leaders and official decisions on public affairs, they must be able to understand the underlying reasoning. In this context, it must be recognised that Hegel envisioned publicity to serve as a means of accountability too. The early lectures clearly convey that the public nature of parliamentary proceedings enables the accountability of deputies. It counteracts indulgence in 'superficiality and mediocrity of knowledge' as 'conceit is most punished and suppressed'. This passage is clearly aimed at representatives, not the general public, as Hegel's illustrative reference to a false statement by 'Count Waldeck in Württemberg's Estates Assembly' shows.¹⁴⁴

Hegel's Estates Assembly has also been described as constituting 'organised public opinion',¹⁴⁵ which puts it in contrast to his own characterisation of public opinion as 'inorganic'.¹⁴⁶ For instance, he refers to the periodical questioning of ministers before the Assembly as 'one of the greatest spectacles'.¹⁴⁷ As discussed in Chapter 3, its members collect and investigate complaints and hold ministers and officials accountable. By doing so, the Estates Assembly helps to exercise public scrutiny and ensure governance focussed on the common good. As Hegel points out in the early lectures, 'protection is very low for the citizen who is supposed to indict before officials [other] officials who are judged in secret'.¹⁴⁸ Arguably, the 'public censorship' of government activity, which Hegel

¹⁴² *VPR*9, 580. Hegel uses the same proverb derived from Psalm 127 against Fries and the *Burschenschaften* in *PR*, preface, 9.

¹⁴³ Hölscher 1978, 460. ¹⁴⁴ *VPR*17, 202. ¹⁴⁵ Rosenzweig [1920] 2010, 428.

¹⁴⁶ *VPR*24, 1464 -*PR* §316Z. Both Knox and Nisbet imprecisely render 'unorganische' as 'unorganized', here as well as in §302.

¹⁴⁷ *VPR*17, 193. ¹⁴⁸ *VPR*17, 186.

explicitly demands in the remark on §301 of the *Philosophy of Right*, could not be realised without publicity. Nonetheless, Hegel also mentions possible ‘detrimental effects’ of publicity, for he feared the effects of demagogic rhetoric. Drawing on the French experience, he therefore makes an exception from the publicity requirement for ‘revolutionary circumstances’ in order to counteract mob mentality.¹⁴⁹

As mentioned above, the contemporary demand for representative constitutions was widely paralleled by that for publicity. A similar appreciation of the need for an ‘Estates Assembly which moves under the eye of the people’ is expressed, for instance, in the *Address of Koblenz*. Much like Hegel, its leader Joseph Görres presents such an Assembly as the ideal stage for ‘all talents’ to hone their skills and train the public sense of tact. It is described as a place for exactly the kind of ‘intellectual gymnastics’ that the stiff inhabitants of the German states need.¹⁵⁰ The Prussian State Chancellor Hardenberg’s reception of the *Address* in 1818 also provided a relevant and timely example of a powerful government listening to public opinion outside the institutional channel of estate-based representation.¹⁵¹ Hegel was sceptical of ‘the people’s general blaming’ and thought their ‘discontent’ had to be carefully examined before governments gave in to ‘the people’s wishes’.¹⁵² Like so many contemporaries, however, he clearly acknowledged the increasing importance of ‘public opinion’ in his own time (§316). In a note added to one of Cart’s *Lettres* (1798), Hegel had also complained of the disregard for ‘the people’s opinion [*Volksmeinung*]’ lately shown by British ministers backed by parliamentary majority. Clearly, he lamented, ‘the [English] nation is so imperfectly represented that it is not capable of asserting its voice in parliament’.¹⁵³

Hegel pays his tribute to public opinion as ‘this great lever of our times’, asserting that it played an eminent role ‘at all times, but especially in our time’, where ‘the principle of subjective freedom’ has gained its right.¹⁵⁴ ‘The formal subjective freedom’ of modern individuals includes the right to ‘have and express their *own* judgments, opinions and counsels on universal matters’ (§316). This materialises in public opinion, where ‘everybody’ may make their ‘subjective opinion on the universal’ heard (§308A). In this way, it presents ‘a complement’ to representation, where individuals and their voices are not accounted for. Returning to the women question touched earlier, their share in public opinion remains dubious. On the one hand, Hegel clearly attributes to them full

¹⁴⁹ *VPR*19, 570; *VPR*17, 202. ¹⁵⁰ [Görres] 1818, 43. ¹⁵¹ [Görres] 1818, 46 points this out.

¹⁵² *VPR*17, 188. ¹⁵³ *GW*2, 470. ¹⁵⁴ *VPR*17, 163; *VPR*24, 1464; *ibid.* (–*PR* §316Z).

personhood and thus the right of subjective freedom. At the same time, their exclusion from civil society leaves them with far fewer avenues to make their voices heard. Hegel himself actively drowned out that of his friend Caroline Paulus, unless his memory failed him when he quoted a witty comment of hers on the occupation of Nuremberg to another correspondent as that of 'a magistrate who had carefully considered the importance of the current state of affairs'.¹⁵⁵

Hegel is famously ambiguous on public opinion. The fundamental problem, he notices, is that one's insight may be 'mere *opinion* and *error*' just as well as it may contain the truth (§132A). This is also reflected in public opinion at large, which thus harbours a great 'self-contradiction' (§316). In the remark on §317 of the *Philosophy of Right*, Hegel cites three literary aphorisms to illustrate the tension and ambiguity involved in public opinion. On the one hand, he finds it correct to say that the voice of the people is the voice of God, or in the common Latin phrase, 'Vox populi, vox dei' (§317A). At the same time as public opinion provides an outlet for individual voices, it constitutes 'the utterance and the judgment of all' and may be considered the 'common sense' inherent in a people.¹⁵⁶ Yet Hegel also invites his readers to recognise the truth contained in quotations from Ariosto's *Orlando Furioso* (in Italian) and his friend Goethe's poetry to the effect that the common people are extremely ignorant.¹⁵⁷

As noted in previous chapters, Hegel thought that the majority of people do not know what they really want, let alone are conscious of their people's spirit, and accordingly their opinions have little place in the sphere of active politics, which is a matter for 'the wise'.¹⁵⁸ This sentiment chimes with the scepticism about the people's appropriateness for the discussion of 'public business' conveyed by countless eighteenth-century writers, like Montesquieu.¹⁵⁹ The German equivalent of *vox populi, vox dei* is also used, for instance, by Friedrich Schiller in his famous play *Maria Stuart*, when Queen Elizabeth is urged by her advisor to fulfil the popular wish for her rival's execution.¹⁶⁰ It is also alluded to in a poem by Hegel's old friend Friedrich Hölderlin, entitled 'Stimme des Volks' ('Voice of the People').

¹⁵⁵ *BII*, 16: Hegel to Niethammer, 23 December 1813. Cf. *BII*, 8: Heinrich and Caroline Paulus to Hegel, 23 May 1813.

¹⁵⁶ *VPR*19, 570, 571. According to Hegel, what constitutes common sense differs from one people to the next.

¹⁵⁷ Hegel owned a 1570 edition of *Orlando Furioso* (*K* 916). He frequently cited Goethe's works.

¹⁵⁸ *VPR*17, 163. ¹⁵⁹ Montesquieu [1748] 1989, 159.

¹⁶⁰ Schiller 1801, 180 (Act IV, Scene 8). Hegel owned an Italian edition from 1829 (*K* 921).

Hölderlin likens it to the streaming waters, which are pleasant to hear and may move the heart but reflect neither 'wisdom' nor his own opinion.¹⁶¹ Both Schiller and Hölderlin are obviously wary of the powers of public opinion, and Hegel seems conflicted about it in even greater measure.

With both elements, the seemingly divine and the ignorant, present in public opinion, it simultaneously contains 'truth and endless error' (§317A). Given this ambiguity, Hegel considers public opinion 'one of the most difficult phenomena'.¹⁶² One of his notes, probably dating from the 1820s, mentions the opposition between 'public opinion' and 'public reason – *la raison publique*'.¹⁶³ Rather problematically, Hegel distinguishes between the '*immediate expression*' and the supposedly true substance of public opinion [*das Substantielle*] (§317A). In the preface to the *Philosophy of Right*, he refers to 'the alleged difficulty' of extracting from 'an infinite variety of opinions' what is 'universally acknowledged and valid'. As the word 'alleged' indicates, Hegel dismisses such difficulty as self-imposed and a case of 'not seeing the wood for the trees'. Repeatedly, he rants against eccentric opinions that diverge from what is deeply rooted in a people's consciousness and publicly acknowledged [*das Öffentlich-Anerkannte*].¹⁶⁴ As the notorious preface to the *Philosophy of Right* is especially polemical and has been interpreted as an attempt to deter the censor, these quotations should be taken with a pinch of salt. In a similar vein, Hegel's declaration in the *Lectures on the History of Philosophy* that there are no 'philosophical opinions' reveals, above all, his own claim to possession of the truth.¹⁶⁵ We shall return to it in the final section of this chapter.

Given that public opinion contains the whole spectrum from truth to error, Hegel concludes that it must be both '*respected*' [*geachtet*] and '*despised*' [*verachtet*] (§318). Historically, he finds, so-called great men have always acted 'against public opinion'.¹⁶⁶ In the remark on §317 of the *Philosophy of Right*, he mentions the infamous prize essay question of the Berlin Academy of Sciences from 1780, which he rephrases as '*whether it is permissible to deceive the people?*'. The original question asked whether it was useful to do so and, encouraged by Jean le Rond d'Alembert, was posed by Friedrich II of Prussia, whom Hegel credits as a 'great spirit' (§317A).¹⁶⁷ In the *Phenomenology of Spirit* of 1807, Hegel had candidly

¹⁶¹ Hölderlin 1826, 41.

¹⁶² *VPR*19, 571: 'eine der am schwersten zu begreifenden Erscheinungen'.

¹⁶³ *GW*22, 201. On the dating, see *ibid.*, 361. ¹⁶⁴ *PR*, preface, 8. ¹⁶⁵ Hegel 1986b, 30.

¹⁶⁶ *VPR*19, 572. Cf. *VPR*22, 1035 (–*PR* §318Z).

¹⁶⁷ For a recent analysis of the 1780 prize essay question's origins and significance, see Lim 2018. Hegel's appreciation of Friedrich is also expressed elsewhere, as in *VP*G, 523, where the Prussian

claimed 'that the question is no good' because he considered deceit to be impossible with respect to one's own consciousness.¹⁶⁸ In the *Philosophy of Right*, he elaborates his own answer: while a people cannot be deceived about its own 'spirit', it 'is deceived *by itself*' about the way in which to recognise it and to pass judgement accordingly (§317A). This clearly implies the need for leadership and ultimately, Hegel concludes, public opinion should be ignored if anything 'great and rational' is to be achieved (§318). Even if, as Hegel asserts, 'especially philosophers have at all times' treated public opinion with contempt, such a position took on new significance in the context of his own time, where public opinion had started to emerge as a source of legitimacy and a political force to be reckoned with.¹⁶⁹

Hegel's views on public opinion cannot be considered without the attendant and 'most difficult matter' of freedom of the press.¹⁷⁰ The press was the very medium that had enabled the establishment of public opinion in the first place, and the French Constitution of 1791 had exemplarily enshrined its freedom. Contemporaries agreed that it was 'mostly newspapers and periodicals from which public opinion is to be learnt' and advocates of constitutionalisation stressed the importance of having freedom of the press and speech so that rulers could hear 'the voice of the people'.¹⁷¹ Hegel, a voracious reader of news from near and far as well as a one-time newspaper editor himself, firmly advocated the publicity of Assembly proceedings in conjunction with a free press. He thought it was 'easy to see how necessary and useful indeterminate freedom of the press is' in order to hold officials accountable.¹⁷² It was needed especially in the large states characteristic of the modern world, given how far print exceeded the spoken word in terms of its 'far-reaching contact' (§319).¹⁷³ Since not everybody could witness Assembly proceedings as they take place, their publicity must be enhanced by reporting in print. Enabling the connection of the public with political process, the press presents an 'essential addition' to an Assembly of Estates.¹⁷⁴

code of law is called 'his immortal work', or the mentioning of Friedrich's intervention in the case of the millers Arnold discussed in Chapter 3.

¹⁶⁸ *GW*9, 299.

¹⁶⁹ On this rich subject, see Habermas [1962] 1990/1989; Hölscher 1978; Baker 1990; Bödeker 1990; Barker and Burrows 2002 for a start.

¹⁷⁰ *VPR*9, 572. ¹⁷¹ Förster 1818a, 337; [Zahn] 1818, 31: 'die Stimme des Volkes'.

¹⁷² *VPR*7, 186.

¹⁷³ The translations by Knox ('range of contact') and Nisbet ('wider range of contact') seem to eclipse the aspect of bridging distance, which is made explicit in *VPR*9, 572.

¹⁷⁴ *VPR*7, 203.

At the very time the *Philosophy of Right* was published, freedom of the press was being challenged and its legal regulation constituted a delicate issue for Hegel to address. For a long time, the fragmentation characteristic of the German-speaking territories had resulted in porous control of the press only.¹⁷⁵ In 1815, Article XVIII of the Federal Act promised deliberations on the uniform regulation of freedom of the press and intellectual property rights, and both issues were vigorously debated until the issuing of the infamous Karlsbad Decrees in 1819, of which more below. Hegel shows himself somewhat conflicted on the question of press laws and was in fact hardly less ambiguous about freedom of the press than about public opinion itself. Like many contemporaries, he clearly perceived the need for some regulation, convinced that the 'freedom of public communication' is safeguarded by the very laws and regulations that punish its abuse (§319). As the spoken word is more transient, Hegel only concerns himself with the problem of judging and regulating what may be written. While the prohibition of 'direct incitement to theft, murder, rebellion, etc.' seemed a straightforward matter, freedom of the press became complicated where libel was concerned (§319A).

In his earlier correspondence, Hegel explicitly distinguished between 'publicity' proper, which enables the accountability of government action, and mere freedom of the press [*Schreib- und Preß-Freiheit*] which, in a pun, he equated with the freedom to let one's mouth run unchecked [*Freß-Freiheit*].¹⁷⁶ For a model of true publicity, consisting in a 'dialogue of the government with the people about its and their interests', Hegel looked to (an idealised picture of) France and England. He especially appreciated the idea of a state-backed journal like the *Moniteur*, thinking that its contents would be infused with an air of 'authority' without being truly subject to censorship.¹⁷⁷ After the defeat of Napoleon, in whose reign Hegel's occupation as editor of a Bavarian newspaper had fallen, the Germans instead seemed to enjoy 'the new freedom of being allowed to freely and frankly fill newspapers as well as letters and stories with nothing but lies'.¹⁷⁸ 'To define freedom of the press as the freedom to say and write *whatever you like*', Hegel argued, is just as mistaken as to think of freedom in general as 'the liberty to *do whatever you like*' (§319A; cf. §15A). This

¹⁷⁵ Hellmuth and Piereth 2002, 78–79.

¹⁷⁶ *BI*, 209: Hegel to Niethammer, 22 January 1808. I think my interpretation of *Freß-Freiheit* is more plausible in the context of the letter than its translation into 'freedom to gobble it up' by Butler and Seiler 1984, 157, even though the notion of 'a frenzy of various factions devouring each other' adopted by Pinkard 2000, 253 does strike a chord.

¹⁷⁷ *BI*, 209. ¹⁷⁸ *BII*, 15: Hegel to Niethammer, 23 December 1813.

closely echoes Montesquieu's insistence that 'political liberty in no way consists in doing what one wants . . . Liberty is the right to do everything the laws permit'.¹⁷⁹ Among Hegel's excerpts, there is also one from an (unidentified) English newspaper, probably dating from the late 1820s, in which 'liberty of the press' is compared to 'that liberty of action [which] consists in the right to spit in any man's face whom we meet'.¹⁸⁰ Perhaps this describes the conundrum Hegel faced rather well.

Despite all his scepticism, Hegel did demand considerable scope for informed public debate and sometimes one is reminded of Kant's notion of the public use of reason.¹⁸¹ As demonstrated earlier, Hegel himself employed some notion of public opinion as a political tribunal that would hold officials to account.¹⁸² Nonetheless, recent commentators have often interpreted Hegel's ambivalence towards public opinion and freedom of the press unfavourably, reproaching him with the espousal of 'conservative state idealism' in contrast to a more 'liberal' conception of publicity.¹⁸³ In contrast, an anonymous contemporary reviewer of the *Philosophy of Right* considered Hegel too charitable towards public opinion and too lax and vague on the limits of a free press.¹⁸⁴ This circumstance reveals that many contemporaries generally saw a need to restrict freedom of the press in some way and were prepared to go further in this than Hegel. Although recognising the danger that 'opinions poison attitudes', he rather insisted on the need for a certain indifference towards circulating opinions, as he thought was prevalent in England.¹⁸⁵ The effect of bad press would also depend on the overall condition of society, as explained in the final section of this chapter. The question was where to draw the line, for it is impossible to determine objectively, and therefore by law, what constitutes genuine 'injury' (§227). In this context, Hegel insists that freedom of the press is necessarily connected to the existence of juries.¹⁸⁶

¹⁷⁹ Montesquieu [1748] 1989, 155 (XI, 3). Cf. also Kant [1795] 1992, 59–60, n.

¹⁸⁰ *GW*22, 204. The editors have dated this excerpt to 1824–28 on account of the paper used (*GW*22, 365).

¹⁸¹ On the latter, see, for instance, Habermas [1962] 1990, 178–95.

¹⁸² Intriguingly, it is Bentham 1817, whom we have encountered in Chapter 4, that Habermas [1962] 1990, 174 cites to this effect. Yet the topos of the public as a court of judgement, especially on literature, had a long history (Hölscher 1978, 435). For a good example, see Klopstock 1979, 254–58: 'Von dem Publico'. It is telling that the German *Publicum* may be rendered 'the public' as well as 'audience'; while the latter predominates today, Hegel uses it in the former sense in *PR* §236.

¹⁸³ Hölscher 1978, 460. Cf. Habermas [1962] 1990, 195–201.

¹⁸⁴ *Allgemeine* 1822, 315–16. Hegel made an excerpt of this review; *GW*22, 73–74.

¹⁸⁵ *VPR*19, 573. ¹⁸⁶ This is made explicit in *VPR*17, 203.

Trial by Jury

The institution of trial by jury was barely a reality in the Germany of Hegel's time. While most jurists came to see the jury as 'the centrepiece of liberal criminal trial law' in the 1820s and '30s,¹⁸⁷ Hegel's follower Eduard Gans posthumously exacted appreciation for the fact that Hegel had defended, or indeed demanded, 'the publicity of courts and of the proceedings of Estates as well as trials by jury . . . in difficult times'.¹⁸⁸ Long conventional in England, juries were also introduced in revolutionary France and confirmed by article LXV of the *Charte constitutionnelle* of 1814. As regards the German territories in the immediate post-Napoleonic period, the institution of trial by jury was retained in parts of the formerly French, now Prussian Rhineland and there was much public debate about its introduction in other territories, too. The 1818 *Address* of Koblenz, which belonged to the Prussian Rhineland, expressed concern about the continued existence of 'public and oral legal procedure and trial by jury'. It stressed how this institution had proven itself in practice and, in the face of reproaches of Francophilia, rejected the notion that juries were French in origin. As was 'known the world over', trial by jury had originated 'on German soil', spread to England and thence to France, before finally returning to Germany.¹⁸⁹

In contemporary culture, the jury system was commonly perceived as a specifically English trait,¹⁹⁰ and the English rather than the French legal system provided Hegel's model for juries. The reason for this preference is that Hegel considered the English principle of 'unanimous decision' to be superior to that of a mere two-thirds majority required in France.¹⁹¹ As he points out, the very term jury, 'so-called *Geschwornengerichte*' in German (§228A and *Encyclopedia* 1830, §531A) – literally 'courts of the sworn' or 'sworn courts',¹⁹² on account of the jurors' oath taking – 'is taken from the English legal constitution'.¹⁹³ Yet Hegel also rejects the contention that juries 'are something alien' to Germany as 'not historical', because German municipal courts used to consist of juries before Roman law was

¹⁸⁷ Blasius 1974, 149. Blasius speaks of a 'struggle' for juries in his very title. ¹⁸⁸ Gans 1833, XI.

¹⁸⁹ [Görres] 1818, 26.

¹⁹⁰ As demonstrated by the reference in Paul [1793] 2014, 30, to name but one example: 'daß man ebenso gut von Leuten seines Standes hier *unterrichtet*, als in England *gerichtet* werden könne'.

¹⁹¹ *VPR*17, 135. Cf. *VPR*24, 1374.

¹⁹² The anonymous student who transcribed the lectures of 1821/22 spells it 'geschworne Gerichte' in *VPR*21, 741.

¹⁹³ *VPR*19, 485.

introduced.¹⁹⁴ In England, 'that old Germanic institution continued to exist, which is closely linked with political liberty'.¹⁹⁵ Hegel thus produces essentially the same argument as the Rhinelanders. They, so the *Address* of Koblenz claimed, recognised the qualities of this fine institution and would be ready to defend it against the Prussian authorities.

A year after the *Address* had been delivered, a commission of Rhenish jurists released a report that provided an important reservoir of argumentation in favour of trials by jury.¹⁹⁶ The editors of the critical edition of the *Philosophy of Right* argue that Hegel refers to one of the report's 'essential lines of argumentation' on missing confessions and extraordinary punishments in the lectures of 1821/22.¹⁹⁷ These issues also resurface in Hegel's other lectures. As a cautionary tale of false confession, the transcript for 1822/23 references the recent case surrounding the robbery and murder of the well-known painter Gerhard von Kügelgen in March 1820. A certain Johann Georg Fischer had admitted guilt first but then recalled his confession. The real culprit Johann Gottfried Kaltoven was found soon thereafter and executed in July 1821. Such cases clearly rendered reliance on admissions of guilt problematic, which still constituted 'the common [way] in German law' in Hegel's own time.¹⁹⁸ He points out that, historically, such admissions had often been extracted through torture and claims that the persecution and burning of witches would have assumed a far lesser extent had there been trials by jury.¹⁹⁹

The impression arises that for all his concern with objective guarantees and rational institutions, Hegel also wants to retain an element of humanity and provide some scope for compassionate action, especially with view to the possibility of unjust legal systems. Through the leeway opened by their subjective function, juries may constitute a counterbalance, for instance, where punishments are too harsh. Hegel gives an example to that effect from England, where petty theft of 40 shillings 'is known' to be punishable by death and juries 'very often determine the theft at 39 shillings or even less' to save their peers from death by a humanely admissible twist in the facts.²⁰⁰ After all, a jury decision is very clearly 'a subjective

¹⁹⁴ VPR21, 744. Hölischer 1978, 418 confirms a decline in public court proceedings with the reception of Roman law.

¹⁹⁵ VPR18, 235.

¹⁹⁶ *Gutachten* 1819 (see also *Gutachten* 1818). It was countered by Mosqva 1820.

¹⁹⁷ Hegel 2015c, 521 (-GW14,3). ¹⁹⁸ VPR22, 986 -PR §227Z.

¹⁹⁹ VPR19, 489; VPR24, 1372-73.

²⁰⁰ VPR24, 1371. Hegel mentions a specific 'recent' case about which he must have read in the papers sometime before giving the lecture.

one'; it is indeed supposed to be an expression of 'subjective evidence',²⁰¹ or 'subjective conviction and conscience (*animi sententia*)' (§227). In contrast, the proclamation of verdicts, as the objective element in jurisdiction, is the duty of a professional legal scholar or a 'juridical judge' who acts 'as organ of the law' (§226). Accordingly, Hegel criticises English juries for returning verdicts when they should be concerned with the determination of facts only.²⁰²

Another source that proved very influential in the controversy were the 1813 *Betrachtungen über das Geschwornen-Gericht* (*Considerations on the Trial by Jury*) by Paul Johann Anselm Feuerbach, author of the Bavarian Penal Code and father to one of Hegel's most famous students, Ludwig Feuerbach. In his book of 1813, Feuerbach draws a distinction between the jury 'merely as penal institution' and 'as a political institution, as part of the state constitution'.²⁰³ As concerns the former, suffice it to say that Feuerbach thinks judgement by peers will produce partiality and injustice. From a constitutional perspective, Feuerbach considers juries appropriate for republican but not monarchical forms of government. For the latter, he demands benches of professional judges [*Richter-Collegien*] which, he claims, serve to maintain 'personal freedom' just as much as juries.²⁰⁴ Feuerbach's likening of such a college of judges to a 'sanctuary' or 'palladium' is directly contrasted by Hegel's notice that juries are seen as 'the palladium of liberty' in France and England.²⁰⁵

While Hegel concedes that juries are not less partial as a matter of principle,²⁰⁶ he discounts the argument that 'the administration of purely juridical courts may be exercised well' as beside the point (§228A). (Incidentally, Hegel also disagrees with Feuerbach's theory of punishment as based on threat, which is still seen as the foundation of German penal law today: §99A.)²⁰⁷ What really is at stake in the existence of juries, as

²⁰¹ VPR24, 1369.

²⁰² VPR22, 988. For Hegel's criticism of the English system of common law, see Chapter 2.

²⁰³ Respectively, these are part of the headings of chapter 4 and 2 in Feuerbach 1813. *Gutachten* 1819 explicitly addressed Feuerbach's arguments.

²⁰⁴ Feuerbach 1813, 76, 80. In Hegel 1991, 449, Wood mistakenly claims that Feuerbach advocates the jury system. In contrast, Blasius 1974, 152 describes him as 'prominent opponent' and 'the harshest critic' of the jury system. In 1819, Feuerbach published a *Declaration ... on his allegedly changed conviction in respect of trials by jury*. On early nineteenth-century discussions about the role of judges in the German lands, see Löhnig 2012.

²⁰⁵ Feuerbach 1813, 78; LW, 101 (reiterated in VPR19, 489).

²⁰⁶ This is made explicit in VPR22, 988.

²⁰⁷ See Feuerbach 1799, 1800. Hegel's proximity to Thibaut (on which see Chapter 2) may have played a role in his disagreement with Feuerbach. In any case, his library contained a gift copy of Thibaut's 1802 *Contributions to a Critique of the Feuerbachian Theory of Penal Law* (K 1208).

with the Estates Assembly or the monarch, is the accommodation of ‘the right of self-consciousness’ (§228). They are ‘such an important political institution’²⁰⁸ due to their realisation of that right, or ‘the moment of *subjective freedom*’. This is the main argument for the ‘*utility*’ – even though Hegel professes not to think in such terms – of the institution of juries, and all other ‘advantages and disadvantages’ are negligible in contrast (§228A). Like the other institutions of Hegel’s rational state, he believed trial by jury would contribute to the realisation of subjective freedom.

Essentially, Hegel applies the same argument here as in the case of codification discussed in Chapter 2. This link is made explicit in his assertion that a ‘native true code of law pertains to publicity’.²⁰⁹ Hegel is clearly averse to a legal system operating solely through professional lawyers, with their abstruse jargon and pedantry, when the law is everyone’s concern (§132, §210). He disapproves of the introduction of Roman law, which ‘was always alien to the German genius’ and rendered the administration of justice the ‘*property of a learned class [gelehrten Standes]*’.²¹⁰ In contrast, the right of self-consciousness is fulfilled ‘in the *confidence* in the subjectivity of those who decide’ on the basis of ‘the equality of the [accused] party with [the jurors] in respect of their particularity, estate, and the like’ (§228). The underlying idea is that, when someone is judged by their peers, the legal process appears as something tangible rather than ‘incomprehensible’.²¹¹ To be judged by people just like oneself expresses freedom because it ensures that the accused is treated as a person, not as someone unknowing and subject to ‘*tutelage*’ (§228A).²¹² As far as mere ‘sensuous’ facts or ‘empirical truth’ are concerned, ‘*every educated person [Mensch]*’ may judge and be judged by their peers (§227&A). Indeed, it would be odd for a court of professional lawyers to claim the exclusive privilege to determine the facts,²¹³ and such dependence on professional lawyers – which seems the norm nowadays –

While Hegel does not mention Feuerbach by name in the *PR*, he does so in the lectures, e.g., *VPR*7, 49; *VPR*8, 273, 283; *VPR*9, 382. Based on *VPR*22, 855–56, it found its entry into the 1833 edition of *PR* §99Z.

²⁰⁸ *VPR*9, 488.

²⁰⁹ *VPR*21, 743. Cf. Thibaut 1814, 26: ‘a strong native code of law [is] the common property of all’.

²¹⁰ *VPR*8, 235. Hegel also speaks of the ‘alienation of *law* from subjective consciousness’ in *VPR*7, 133. In contrast, the Romantics admired Roman law; see Whitman 1990.

²¹¹ *VPR*21, 745.

²¹² One thinks of Kant’s famous 1784 essay on *Aufklärung* here. For an English translation, see Kant 1991.

²¹³ *VPR*21, 744.

would amount to ‘a kind of serfdom’ in Hegel’s eyes (§228A). As he puts it succinctly in the lectures, ‘the point with trial by jury is that justice is not only administered, but that it enters public consciousness’.²¹⁴ ‘On the left bank of the Rhine’, home to the Napoleonic Code and the jury system, Hegel approvingly notes, people ‘know their law code very well’.²¹⁵

Like numerous contemporaries, Hegel connected the demand for trial by jury to free press precisely because no laws could adequately regulate freedom of the press. The underlying idea is that peers of the accused will be familiar with their kind of mindset and most able to adjudicate whether, in actions of libel, a certain public utterance constitutes a serious offence or not. The institution of trial by jury could thus be seen as a means to constitutionally guarantee ‘the people’s voice’ in the long run, which is exactly what contemporaries demanded.²¹⁶

The Condition of Society

Context matters too for the reception and official treatment of the press. The adjudication of crimes, Hegel explains in earlier sections of the *Philosophy of Right*, must correlate with an action’s ‘*danger to civil society*’ (§218A), or ‘*danger to public safety*’ (§96A). The latter, in turn, depends on ‘the *condition* of civil society’ (§281A). Harsher punishments, Hegel argues, are needed in less stable societies and vice versa. He reasons similarly on religious tolerance, saying that a ‘strong state’ – meaning one advanced in its organisation – may be ‘all the more liberal’ with respect to religious communities, even those ‘which on religious grounds do not recognise even their direct duties to it’, such as Quakers, Methodists and Anabaptists (§270A). Essentially the same principle applies to the press. Hegel illustrates the conditionality of an utterance’s incendiary potential with the metaphor of a spark, which may set ablaze a pile of gunpowder but dies down when it hits nothing but solid ground. The condition of society thus determines ‘the *nature* and *form* of *reaction*’ to a given statement (§319A). It is for this reason that freedom of the press is most suited to a people that is ‘already in a higher stage of public development [*Bildung*]’.²¹⁷

A consistent point of reference for Hegel’s views on public opinion, freedom of the press and its regulation is England. As mentioned earlier, he observes in his correspondence that a greater degree of insight of the public into government affairs, or ‘*publicity*’, prevails in England and France than

²¹⁴ VPR22, 1026.

²¹⁵ VPR21, 744.

²¹⁶ Förster 1818a, 337.

²¹⁷ VPR17, 204.

in the German lands.²¹⁸ As Keith Michael Baker has shown, ‘the English practice of publicity’ was a crucial and contested reference for discussions of public opinion in eighteenth-century France itself.²¹⁹ In his dismissal of Colonel Massenbach’s patriotic pamphleteering mentioned in Chapter 1, Hegel directly contrasts the state of public opinion in Germany and England. As one of ‘those who shout the loudest’, Massenbach serves as an example for the poor judgement of state affairs Hegel considers prevalent among the Germans, which compares unfavourably with public opinion in England.²²⁰ An avid reader of British newspapers, Hegel perceived the English as far better informed than the Germans. In fact, Massenbach himself thought that freedom of opinion was prevalent in England to a higher degree than in Germany, too.²²¹

The lecture sections corresponding to §319 of the *Philosophy of Right* routinely recommend the English way of handling the press. Hegel claims that, apart from legislation, freedom of expression also has an ‘indirect guarantee’ in its ‘innocuousness’. Such harmlessness is effected not only by ‘the rationality of the constitution, the stability of the government’ and ‘the publicity of the Estates Assemblies’ but also by ‘the indifference and contempt’ with which ‘shallow and malicious talk’ is treated (§319). In the lectures, Hegel presents this as the reality in Britain, even though ‘the English laws are not at all as mild towards offences by the press as is usually assumed’.²²² In the *Philosophy of Right*, Hegel refers to the ‘satirical songs’ lavished on Roman emperors by their soldiers to illustrate his point about the ‘less harmful nemesis’ effected by public ridicule of the powerful, in contrast to more sinister machinations (§319A). He maintains that once people have had the chance to communicate their opinion and thereby satisfy ‘that tingling urge to express and have expressed one’s opinion’, they are easily mollified (§319). In this way, Hegel reasons, freedom of the press creates the ‘indifference and immunity’ with regard to personal honour to be observed ‘in other countries’.²²³ For in France, too, the exercise of free speech was supposedly dreaded less than silence.²²⁴ Inter alia, Hegel may have had in mind the article on the press in the *Encyclopédie*, where Louis

²¹⁸ *BI*, 209; Hegel to Niethammer, 22 January 1808. ²¹⁹ Baker 1990, 192.

²²⁰ *VPR*7, 202. I think Pelczynski 1986, 94 and Pöggeler 1995, 38 are mistaken in interpreting the passage to mean that Massenbach slandered the English. Stewart and Hodgson seem to interpret the passage as I do, for they have rendered ‘gegen die Engländer’ as ‘by contrast with the judgment of the English’ (Hegel 1995, 288).

²²¹ Massenbach 1817b, 17. Such views were commonplace at the time.

²²² *VPR*19, 573. On contempt of the press in England, cf. *VPR*17, 204; *VPR*22, 1037; *VPR*24, 1467–68.

²²³ *VPR*17, 204. ²²⁴ *VPR*22, 1035 – *PR* §317Z.

de Jaucourt cautions against ‘murmurs’ and ‘secret discontents’, which may fuel unrest unless they are heard and remedied by the authorities.²²⁵

More importantly, for Hegel, public slander may serve as a vent for dissatisfaction and achieve ‘a kind of balance’, serving as ‘*nemesis*’ (§319A). Interestingly, the latter is the name of not only the Greek goddess tasked with giving to each their share but also a well-known *journal of politics and history* that appeared from 1814 to 1818. Named with anti-Napoleonic intent, it was clearly inspired by a greater faith in the beneficial power of public opinion than openly allowed for by Hegel.²²⁶ Its editor Heinrich Luden was professor of history at Jena and councillor to the Duke of Weimar, and the publisher Friedrich Justin Bertuch also was behind the *Oppositions-Blatt oder Weimarische Zeitung*. Ironically, the journal *Nemesis*, which has been described as a platform for ‘liberal’ commentary,²²⁷ played a role in causing the eventual decline of the free press through Luden’s attempt to publish a secret report to the Russian Tsar from the playwright August von Kotzebue. The ensuing scandal was highly publicised, and it was Kotzebue’s sensational assassination as a traitor by Carl Ludwig Sand, a student of theology and fraternity member, that led to the establishment of censorship in the Karlsbad Decrees of 1819.²²⁸

In his early lectures, Hegel remarked that ‘Estates and freedom of the press are 2 subjects, with which one is most concerned now’.²²⁹ By the time the *Philosophy of Right* was about to be published, freedom of the press had become an even more tender subject. In August 1819, ministers from most of the German states had taken part in a conference organised by the Austrian minister Clemens von Metternich in Karlsbad. Its outcome was the adoption of repressive legal measures against ‘liberal’ and national currents in the population, especially through provisions on censorship and the press. A central commission was instituted in Mainz to investigate what were considered ‘revolutionary activities’, and universities were subjected to much tighter government control.²³⁰

²²⁵ Jaucourt 1765, 320. In fact, the author seems to have simply translated parts of David Hume’s 1741 essay ‘Of the liberty of the press’ here; cf. Hume 1994, 261–62. For more on early eighteenth-century arguments about free speech, see Thomson 2020. Also, Walton 2011 on *Policing Public Opinion in the French Revolution*.

²²⁶ See Luden 1814 and Bertuch 1814. ²²⁷ Greiling 2000, 584.

²²⁸ Williamson 2000 explores the question of ‘What Killed August von Kotzebue?’. In Buchetmann 2020b, I argue that Kotzebue’s murder had a far greater impact on Hegel’s work than is usually recognised and must be seen as a direct context for the composition of the *Philosophy of Right*, into which Hegel incorporated an elaborate discussion of the incident and its background.

²²⁹ VPR17, 203.

²³⁰ *Protokolle* 1819, 284; this wording forms part of the so-called *Bundes-Untersuchungsgesetz*.

The policymakers' aim was to maintain public order and to safeguard monarchical privileges, and recent scholarship has emphasised their genuine concern over mere reactionary opportunism.²³¹

Commentators have described the situation at the time as marked by an 'atmosphere of terror' and ubiquitous suspicion.²³² The latter was variously condemned and official conspiracy theories were publicly ridiculed even before they had reached their full extent.²³³ A caricature from 1819, entitled *Der Denker-Club* (*The Thinkers' Club*), provides a graphic glimpse into contemporary perception of the Karlsbad Decrees. It shows a group of muzzled gentlemen sitting at a table below a sign establishing the question for debate: 'For how long shall we still be allowed to think?' Universities were especially affected, and several professors lost their chairs during the so-called persecution of the demagogues. Tellingly, Metternich's aide Gentz described Fries, Luden and other professors with strong ties to the *Burschenschaften* – especially at Jena, where Sand had studied – as the real agents behind Kotzebue's murder and insisted on the need to remove them from the university.²³⁴ Public appeals were made to examine the 'influence of teachers [and] their way of thinking' to prevent the seduction of 'German youth'.²³⁵ Some of Hegel's own students were arrested on charges of subversive action. The candidate chosen as his teaching assistant, Friedrich Wilhelm Carové, was dismissed from university on account of his leading role in the fraternity movement and his 1819 commentary on Kotzebue's murder.²³⁶ His replacement Leopold von Henning served a prison sentence, as did Hegel's former student Gustav Asverus. Hegel consequently pleaded with the Prussian authorities to release several of his students from prison.²³⁷ His letters from this time attest to his mixed feelings of terror and hope, such as the following: 'I am almost fifty years old, have spent 30 of them in these eternally restless times of fear and hope, and hoped that fearing and hoping would end sometime.'²³⁸

²³¹ Williamson 2015; see also Siemann 2016 and now De Graaf 2020.

²³² D'Hondt 1988, 119. Cf. Zamoyski 2014. Clark 2007, 403 describes the atmosphere in Berlin as 'hawkish'. For more detail, see Williamson 2015.

²³³ E.g., by Hundt-Radowsky 1819 and Görres 1819. ²³⁴ Cited in *BII*, 444.

²³⁵ Beckedorff 1819, 14, title.

²³⁶ Carové 1819, analysed and related to Hegel's own judgement of Kotzebue's murder in Buchtemann 2020b.

²³⁷ See, for instance, his letter in support of Asverus in *BII*, 217: Hegel to the Prussian Ministry of Police, 27 July 1819.

²³⁸ *BII*, 219; Hegel to F. Creuzer, 30 October 1819. Alas, Hegel had to renew this sigh even later, raising the number to 'forty years of war and immeasurable confusion' in *VP*, 534.

Another frightening example of the consequences of Karlsbad was constituted by the case of 'Fritz' Förster, another friend of Hegel's. Previously attached to Fries, Förster went over to Hegel after his arrival in Berlin and 'soon belonged to the philosopher's close circle of friends and his most eager disciples', as his own brother Ernst wrote in a biographical entry several decades later.²³⁹ Hegel reportedly liked Förster, and their joint trip to Dresden in 1820 provided the origin for the story of Hegel's annual toasting to the storming of the Bastille.²⁴⁰ Following Hegel's death, Förster held an enthusiastic eulogy on 'this king in the realm of thought' and acted as co-editor of Hegel's collected works.²⁴¹ Before all of this, however, Förster was court-martialled on account of an article published in *Nemesis* in 1818 and fired from his teaching position at the Berlin Military Academy. Although eventually acquitted, continued hostility among 'the court faction' he had denounced – and especially the Prussian privy councillor and Chief of Police von Kamptz, who had been the main target of Förster's polemic – lastingly prevented his academic employment.²⁴²

No wonder, then, that Hegel's mother-in-law, Susanne von Tucher, referred to the subject matter of Hegel's book of 1820 as 'delicate for the author'.²⁴³ An illustration of the reality of constraints on publication is provided by the fact that parts of Hegel's newspaper article *On the English Reform Bill* were prohibited from publication in 1831. The *Philosophy of Right* did not remain entirely unaffected by the new regime of censorship either. In the letter from October 1819 quoted above, addressed to his 'highly esteemed friend' Friedrich Creuzer (§203A), a renowned philologist and mythographer as well as Hegel's colleague at Heidelberg, Hegel says that he was just about to start printing when the Decrees were publicly announced.²⁴⁴ A correspondent from Flensburg, which at that time belonged to the Kingdom of Denmark, even offered to look for a publisher outside Prussia in order to circumvent censorship.²⁴⁵ In the end, however, Hegel did submit his work to the censor. For whatever reason, publication

²³⁹ Förster 1878, 187. Cf. *BZ*, 194 and 197 (letters by F. and E. Förster from 1819).

²⁴⁰ See *BZ*, 194 (1819 letter by G. Asverus), 207 and 213–14 (1820 letters by the Förster brothers). Förster's two-volume history of the Prussian state from 1818 (Förster 1818b) also formed part of Hegel's library (K 1014).

²⁴¹ Cited from the re-print of Förster's and Philipp Konrad Marheineke's eulogy in *Rosenkranz* 1844, 563.

²⁴² Förster 1818a, 349. Kamptz is memorably satirized in E. T. A. Hoffmann's *Meister Floh*, which was heavily censored at the time.

²⁴³ *BZ*, 219; dated 16 November 1820.

²⁴⁴ See *BII*, 220: Hegel to Creuzer, 30 October 1819. Creuzer's name is misspelled with a 't' in *GW*14,1/Hegel 2015c, 171.

²⁴⁵ See *BII*, 223: N. Thaden to Hegel, 22 January 1820.

was delayed and the *Philosophy of Right* appeared in its final form about a year later than originally intended.²⁴⁶ In the past, these circumstances have raised some doubt about the degree to which the *Philosophy of Right* represents Hegel's actual views and in how far he tried to appease the authorities by adding or subtracting from his original positions. As mentioned in the Introduction, however, the notion of Hegel's accommodation to the new censorship regime has been effectively disproved. His comment on the Karlsbad Decrees in the letter to Creuzer does not support it either.

In contrast, the ever-contentious preface to the *Philosophy of Right* has been interpreted as an attempt to deter censors from penetrating too far into the book's main body.²⁴⁷ There, Hegel concedes to government the right of action against philosophers who misuse its 'trust' and endanger 'public order and the laws of the state' by preaching a doctrine of subjectivity.²⁴⁸ He pretends to be little surprised by the reaction German governments have shown to such 'self-styled philosophizing', for philosophy is a matter of public concern and has its existence 'in the service of the state'.²⁴⁹ It is worth remembering that, as professor at a university founded by King Friedrich Wilhelm III, Hegel was on the same payroll as any Prussian official at the time and thus had to abide by the rules of the game to some extent. Yet Hegel seemed to overstep the mark when he explicitly attacked his long-time professional arch-rival Jakob Friedrich Fries with reference to the latter's widely distributed speech held at the Wartburg Festival.²⁵⁰ Several reviewers of the *Philosophy of Right* condemned this move as tasteless in view of the fact that Fries had already been dismissed from his chair at the University of Jena.²⁵¹

Hegel was no less uncharitable towards his colleague Wilhelm de Wette, a theologian affiliated with Fries who was suspended from the university of Berlin. The mention of 'the most criminal principles', which have been 'accorded the same status as those laws' constitutes more than just 'a thinly veiled reference' to the letter of condolence de Wette had sent to the mother of Kotzebue's assassin, which became well-known in the course of

²⁴⁶ Possible reasons for the *PR*'s belated printing, even independently of Karlsbad censorship, are discussed in Lucas and Rameil 1980; cf. the editors' report in *GW*14, 3.

²⁴⁷ For instance, Allen Wood refers to it as 'a pledge of allegiance [to] the Prussian authorities who employed him' (Wood 1990, 12; cf. Wood in Hegel 1991, 383).

²⁴⁸ *PR*, preface, 11, 12. ²⁴⁹ *PR*, preface, 13, 11. ²⁵⁰ Fries 1817; see *PR*, preface, 9.

²⁵¹ Hugo 1821, 603; *Allgemeine* 1822, 316–17; Riedel 1975, 64 (Paulus), 99 (Herbart), 100–101 (Zachariae).

the ensuing scandal.²⁵² Rather, the phrase ‘criminal principles’ is a direct rendition of the Prussian King’s judgement of de Wette’s letter, as, for instance, printed by the Weimar *Oppositions-Blatt*.²⁵³ In that letter, with which Hegel was definitely familiar, de Wette wrote that ‘error is excused by steadfastness and sincerity of conviction’ and that ‘both of these were the case with your pious and virtuous son’.²⁵⁴ De Wette himself certainly recognised Hegel’s attack on himself and Fries, which he points out to Schleiermacher in a letter from 30 December 1820.²⁵⁵ While publicly approving of the fate that had befallen de Wette with his dismissal, however, Hegel supported him personally by contributing to a common fund of support raised by fellow professors.²⁵⁶ In the lectures of winter 1819/20, Hegel acknowledged the state’s ‘right to decide over the maintenance of an office’ but added that in such cases, it ‘always owes the individual a kind of compensation’.²⁵⁷

Against the background of the Karlsbad Decrees, Hegel’s comments on censorship in relation to science within the body of his book are especially pertinent. He points to the failings of the Catholic Church in this respect, invoking the burning of Giordano Bruno and the trial of Galileo in the remark on §270 of the *Philosophy of Right*. Tellingly, Hegel speaks of censorship ‘in Rome’ and the ‘subjection of reason to faith’ in the present tense in the lectures.²⁵⁸ In the context of the freedom of expression, he insists that ‘the sciences’ are not based on ‘opinion and subjective views’ and thus do not belong into ‘the category of public opinion’ (§319A). Thereby, Hegel effectively moves the sciences beyond the reach of censorship, at least in theory. By presenting his views as *Wissenschaft*, he not least laid claim to exception from censorship. Especially philosophy was not for everybody and constituted the very opposite of opinion and subjective conviction, namely an ‘objective science of truth’. Quite simply, Hegel asserted, ‘there are no philosophical opinions’.²⁵⁹ According to this logic, it was obviously improper for his book, which even carries the term *Science of State* in its subtitle, to have been investigated by the censor.

Consequentially, Hegel supports academic freedom in general, much to the contrary of what his preface to the *Philosophy of Right* seems to suggest.

²⁵² PR, preface, 13; *ibid.*; Pinkard 2000, 584.

²⁵³ Rüder 1819, 2253; cf. De Wette 1820, 40–41, 44.

²⁵⁴ Cited from Clark 2007, 401; cf. De Wette 1820, 3–4. For instance, de Wette’s letter was contained in the *Aktensammlung* he had published in early 1820, of which Hegel’s library held a copy (K 1576); for more, see Buchetmann 2020b.

²⁵⁵ BZ, 220.

²⁵⁶ See BZ, 199.

²⁵⁷ VPR19, 557. Cf. PR §294A.

²⁵⁸ VPR19, 573.

²⁵⁹ Hegel 1986b, 30.

After all, it could be argued that both Fries and de Wette had stumbled over their explicit political agitation – in the form of speeches and letters – rather than their academic work as such. At the same time, Hegel did slight much of contemporary philosophy as shallow and superficial and insisted that only systematic, speculative philosophy was properly scientific.²⁶⁰ Yet I hope to have demonstrated throughout this work that Hegel actively responded to contemporaries' views which he ostensibly dismissed as mere 'subjective conviction' and was far more responsive to public opinion than his professed views on it may suggest.²⁶¹ His very claim to an objective science of the state is thereby called into question.

²⁶⁰ Hegel 1830, §14A.

²⁶¹ Hegel 1986b, 31.

Conclusion

Several years after Hegel's death, an entry on 'Hegel's philosophy and school' appeared in the renowned *Staats-Lexikon*, or *Encyclopedia of the Sciences of State*, edited by Carl von Rotteck and Carl Theodor Welcker. With its author Karl Hermann Scheidler a former student of Hegel's lifelong rival Fries, the article can hardly be described as even-handed and Marx famously referred to it as 'muck'.¹ For the concerns of this book, Scheidler's pronouncement that 'Hegel declares himself generally for the representative constitution indeed' is of especial interest. He is quick to add, however, that Hegel 'does this in a manner . . . which clearly shows that the *true* idea of the representative system in no way became clear to him and that he understands next to nothing of constitutional monarchy'. Scheidler especially reprehends Hegel for ignoring 'the important difference between the *estate-based* and the *representative constitution* which more recent theorists of the state . . . endeavour to determine so precisely'.² That is the point exactly, however. At the time Hegel was writing, such a distinction was far from established.

A later volume of the *Staats-Lexikon* itself acknowledged that the terms '*representative, constitutional and estate-based system*' had long been used more or less interchangeably.³ The author of the article in question – Georg Friedrich Kolb who, having been born in 1808, belonged to a later generation than Hegel – however, establishes popular sovereignty as the true and characteristic principle of a representative constitution.⁴

¹ Marx and Engels 1974 (MEW 32), 503; Marx to Engels, 10 May 1870.

² Rotteck and Welcker 1839, 643. Scheidler explicitly mentions Dahlmann's *Politics* of 1835 and Zachariae, who theorised constitutional monarchy as a specific form of representative constitution (Zachariae 1839, 243).

³ Rotteck and Welcker 1842, 681.

⁴ In fact, Kolb even draws a distinction between 'Verfassung' and 'Constitution', which is intriguing but beyond the scope of the present discussion. Hegel himself had noted a change in use of the term 'Verfassung' in the third edition of the *Encyclopedia* from 1830 (§539A).

According to that definition, it is of course entirely impossible to enlist Hegel as one of its proponents as Scheidler had, however reluctantly, done. This circumstance alone demonstrates that the conceptual consensus implied in Scheidler's judgement of Hegel remained elusive two decades after the publication of the *Philosophy of Right*. (In fact, Hegel's own mention of the representative constitution in his *Lectures on the Philosophy of History* from the 1820s is more ambivalent than his earlier use of the term.)⁵ When Hegel's book first appeared, the struggle for the prerogative of interpretation was in full swing, and he provided his own distinctive answer to the puzzle of the representative constitution.

From the time of its publication, Hegel's *Philosophy of Right* proved controversial, owing much to its impetuous preface. In his introduction to the second edition, published two years after Hegel's death, Eduard Gans lamented 'the immense disparity that lies between the substantial value of the present book and its appreciation and dissemination'.⁶ Two hundred years on, one could hardly find the circulation of the *Philosophy of Right* lacking, nor its recognition as a work of enduring relevance and appeal. Irrespectively of its contemporary impact, Hegel's main work of politics is still being read and debated today. Yet we can hardly begin to fathom what Hegel was doing without recalling the voices of his interlocutors drowned out by the noise of history. This book, then, has made the case for considering the *Philosophy of Right* as Hegel's intervention in the political debates of his day, presenting an argument rather than the final word. Although not the kind demanded by Gans, such appreciation is of potentially greater significance than any insights Hegel's book may offer directly. In a world and time both similar and unlike Hegel's, it reminds us of the indispensability of context.

The analysis of Hegel's political thought against the background of broader contemporary debate shows that complicated arguments and conscious choices lie behind what is presented as obvious in the *Philosophy of Right*. Attention to the context in which this book was written and published reveals that many of the concerns addressed in it were widely shared and thus disproves the notion of Hegel's aloofness. Certain elements of his thinking, even such central ones as the idea of mediation, are rendered less idiosyncratic and more intelligible against the background of contemporary writings. That Hegel participated in a common discourse is even illustrated by his use and manipulation of common

⁵ *VP*G, 67. The text is based on transcripts of lectures Hegel gave between 1822 and 1831.

⁶ Gans 1833, V.

idioms, examples and metaphors, such as the image of the constitution as an organism or the state as a building. In many ways, Hegel was both a deeply original thinker and very much a child of his own time. His thinking about politics no doubt appears in a different light when considered in relation to the views of his contemporaries rather than later generations. By doing so, the preceding chapters contribute to genuine understanding and enable a more nuanced appreciation of Hegel's place in the history of political thought.

This study has purposely focussed on the immediate context in which the *Philosophy of Right* was written and published. While I have addressed some cases of cultural transfer and sought comparison and connections, much more could, for instance, be said about Hegel's reliance on Francophone sources. Future research may also subject his time as newspaper editor in Bamberg and headmaster at Nuremberg, where Hegel taught *Rechtslehre* between 1809 and 1816, to increased scrutiny. Strikingly, the constitutional debate reconstructed here virtually excludes women's voices, as is obvious from a mere glance at the list of names in the index, and I am currently extending my investigation into political discourse of the period around 1800 to include such lost voices in order to resist the perpetuation of historical mechanisms of injustice. This entails starting deliberately from the intellectual productions of women, often to be located in different quarters than the sources on which this work is based, due to the structural exclusion of women from university and the appertaining genre of academic writing and their underrepresentation in periodical publishing.

There are also insights to be gained from this study beyond an increased understanding of Hegel's political thought. For one, it demonstrates what is to be gained from an approach that eschews the ready application of labels and a corresponding division of historical actors into strictly opposing political camps. The resulting picture of early nineteenth-century political landscape is more complicated than suggested by the general distinction between liberals and conservatives. Approaching political differences openly, a plethora of fault lines becomes apparent instead. At the same time, allegiances are seen to be cross-cutting, depending on specific issues, and many shared positions become visible across supposed, and sometimes very real, ideological divisions.

Finally, we may learn from early nineteenth-century debates, perhaps especially because conditions then were different. Most importantly, Hegel and the majority of his contemporaries were not concerned with

democracy, whose history was long separate from representation,⁷ and they did not take constitutions for granted. Confrontation with the past and alternative ways of thinking may challenge established wisdoms and provoke us to think anew about some of the most crucial components of political life. The earlier visions of political participation discussed here may encourage new ways of thinking about the nature of representation, the virtues required to perform it successfully and the constitutional arrangements best suited to facilitate it. After all, renewed reflection on these issues may not be untimely altogether.

⁷ Pitkin 1967, 2; Manin 1997, 3–4; Hansen 2010, 513.

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